**NINETEENTH JUDICIAL DISTRICT COURT**
**FOR THE PARISH OF EAST BATON ROUGE**
**STATE OF LOUISIANA**

**DOCKET NO: 569,424** **SECTION:21**

**LOUISIANA ENVIRONMENTAL ACTION NETWORK, ET AL.**

**VERSUS**

**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

Filed: _____

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Deputy Clerk

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**PETITIONERS' OPPOSITION TO INTERVENOR'S EXCEPTIONS**

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Petitioners, Louisiana Environmental Action Network (LEAN), the Concerned Citizens of Assumption Parish, the Paincourtville Volunteer Fire Department, Andrea Williams, and O'Neill Couvillion, respectfully file their opposition to Intervenor Belle Company L.L.C.'s ("Belle") Exceptions of Prescription, Res Judicata, and Lack of Subject Matter Jurisdiction filed on March 27, 2009.

## INTRODUCTION

Viewed in light of the applicable law and facts, none of Belle's exceptions have merit. Petitioners recognize, however, that the First Circuit's 2007 decision on the Belle permit places this Court and LDEQ in an unusual situation. By ordering LDEQ to decide on Belle's permit application without considering "issues other than the one for which the case was remanded [in 1998]"[1] the First Circuit created the risk that LDEQ would issue a permit that—in light of current circumstances—is illegal under the code. As a matter of *res judicata*, it is clear that the First Circuit's 2007 decision is only "conclusive between the ***same parties.***" La. Rev. Stat. § 13:4231 (emphasis added). It is equally clear that this is ***not*** a case between the same parties. Moreover, under longstanding principles of Louisiana law, the First Circuit's 2007 decision does not and cannot supplant the legal requirements of the administrative code. This is because "[j]udicial decisions . . . are not intended to be an authoritative source of law in Louisiana. Doerr

v. Mobil Oil Corp., 2000-0947 (La. 12/19/00); 774 So.2d 119, 128. Indeed: "The Civil Code establishes only two sources of law in Louisiana: legislation and custom. *See* La. Civ.Code art. 1. Within these two categories, legislation is superior to custom and will supercede it in every instance. See La. Civ.Code art. 3." *Id.*

Petitioners were not parties to the 1997 appeal of the Belle solid waste permit before this Court or the ensuing First Circuit decision. In addition, Petitioners timely appealed from LDEQ's final agency action issuing the permit now before this court, complying fully with La. Rev.Stat. § 30:2050.21(A) ("A petition for review must be filed in the district court within thirty days after notice of the action or ruling being appealed has been given."). Therefore, this Court should "reverse or modify" if LDEQ's decision reflects a statutory violation or "other error of law" or, inter alia, is "not supported and sustainable by a preponderance of evidence." La. Rev. Stat. § 49:964(G) (incorporated by La. Rev. Stat. § 30:2050.21(F)). In other words, this Court's duty under Louisiana law is to apply the plain language of the code to the administrative record before it, without regard to the First Circuit's 2007 decision's effect on parties who are not now before the Court. *See* La. Civ. Code art. 1 ("The sources of law are legislation and custom."); La. Civ. Code art. 3. ("Custom may not abrogate legislation.").

## ARGUMENT

### I. BELLE HAS FAILED TO PROVE THE REQUIREMENTS OF THE RES JUDICATA DOCTRINE.

Belle's entire res judicata argument consists of two essentially identical, short paragraphs and a reference to one case. Nowhere does Belle discuss the legal requirements of a res judicata exception or why this case meets those requirements. Indeed, none of the judicially-established requirements to prove res judicata are met in this case; the exception must be denied.

#### A. Under Louisiana Law, Belle Must Prove Identity of Parties to Properly Invoke Res Judicata.

Louisiana's provision for *res judicata* is found in La. Rev. Stat. § 13:4231 ("a valid and final judgment is conclusive between the same parties"). Louisiana courts have recognized that the "[f]our prerequisites for the application of res judicata are: (1) the parties must be identical in both suits; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same cause of action must be involved in both cases." Condrey v. Howard, 28442 (La. App. 2 Cir. 8/21/96); 679 So.2d 563,

[1] In re Belle Co., L.L.C., 2006-1077, pp. 2-3, 12 (La.App. 1 Cir. 12/28/07); 978 So.2d 977, 979, 986.

566. The First Circuit has stated that "[r]es judicata cannot be invoked unless all its essential elements are present and each necessary element has been established beyond all question. The res judicata doctrine must be strictly construed, and any doubt concerning its applicability is to be resolved against the party raising the objection." Certified Finance, Inc. v. Cunard, 2001 CA 0797 (La. App. 1 Cir. 4/17/02); 838 So.2d 1, 4 (La. App. 1 Cir. 4/17/02).

Notably, to properly invoke res judicata, a party must prove "identity of parties." Thomas v. Janzen, 35288 (La. App. 2 Cir. 10/31/01); 800 So.2d 81, 89. This accords with the due process principle that a party should have the opportunity to be heard. The identity of parties principle, therefore, is based on the fact that a court decision "does not conclude the rights of strangers to [the applicable] proceedings":

> Giving conclusive effect to a prior judgment against one who is neither a party nor in privity with the party [in the prior suit] contravenes due process. As a consequence, a judgment or decree among parties to a lawsuit resolves issues as among them, *but it does not conclude the rights of strangers to those proceedings*. Thus, without identity between the parties in the first and subsequent actions, an exception of res judicata will not be maintained.

Id. (emphasis added).

Thus, under Louisiana law, the concept of "privity" is narrowly defined:

> [T]he preclusive effect of a judgment binds the parties to the action and nonparties who are deemed the "privies" of the parties in these limited circumstances: [1] The nonparty is the successor in interest of a party; [2] The nonparty controlled the prior litigation; or [3] The nonparty's interests were adequately represented by a party to the action who may be considered the "virtual representative" of the nonparty because the interests of the party and the nonparty are so closely aligned.

Gilbert v. Visone, 708 So.2d 496, 500 (La. App. 2 Cir. 2/25/98). Regarding the second and third circumstances, "[t]he concepts of 'control' and of 'virtual representation' are narrowly construed and are not satisfied merely by showing that the party and the nonparty have common or parallel interests in the factual and legal issues presented in the respective actions . . . ." Id.

Furthermore, "[v]irtual representation demands the existence of an express or implied legal relationship in which parties to the first suit are accountable to non-parties who file a subsequent suit raising identical issues." See Pollard v. Cockrell, 578 F.2d 1002, 1008 (5th Cir. 1978). In E.B. Elliott Adv. Co. v. Metropolitan Dade County, 425

F.2d 1141, 1148 (5th Cir.1970), the federal Fifth Circuit held that two plaintiffs who were not in any way involved in a previous state action challenging a local ordinance, "either as named parties or as members of a class being represented . . . [were] not bound by these previous adjudications." Also, "[f]or a nonparty to be so 'closely aligned . . . requires more than a showing of parallel interest or, even, a use of the same attorney in both suits.'" Id. at 1175 (quoting Freeman v. Lester Coggins Trucking, Inc., 771 F.2d 860, 864 (5th Cir. 1985)).

Representation by the same attorneys does not create privity because "the authority to make decisions [about the merits] is exclusively that of the client," not the attorney. Pollard, 578 F.2d at 1009 (internal quotation marks and citation omitted). Therefore, in determining identity of parties, Louisiana law requires a much closer nexus between parties than simply some discernible alignment of interests in order to ensure that the first party properly stood in place of the second party in light of due process concerns.

### B. Belle Has Failed to Prove the Identity of Parties Needed to Raise a Successful Res Judicata Claim.

Here, there is no identity of parties between the 1997 litigation challenging the LDEQ's August 15, 1997, decision to issue Belle's permit and this litigation challenging the July 2, 2008, LDEQ decision to issue Belle's solid waste permit.

The case at hand involves different appellants than those in the earlier appeal. In September 1997, a local citizens' group, the Assumption Parish People's Environmental Action League (APPEAL), challenged the LDEQ's 1997 issuance of a solid waste permit to Belle, ultimately filing a Petition for Judicial Review in the 19th Judicial District Court. Now, more than ten years later, and after many changed circumstances, Petitioners challenge the 2008 LDEQ decision to issue Belle a solid waste permit. Petitioners are completely different parties than APPEAL, and thus *res judicata* does not apply. Petitioners in this case are the Louisiana Environmental Action Network, the Concerned Citizens of Assumption Parish, the Paincourtville Volunteer Fire Department, Ms. Andrea Williams, and Mr. O'Neill Couvillion, none of which were involved in the original lawsuit with APPEAL in 1997.

In its Exceptions, Belle refers to TELC as if it is a party itself and argues that "TELC cannot get a clean slate to re-open the entire permit proceeding by simply substituting clients."

Belle Exceptions at 7. Belle severely misunderstands the role of the TELC and the nature of the attorney-client relationship. TELC is a group of attorneys and student attorneys acting as a law firm, and the Petitioners are their clients. Thus, it is incorrect for Belle to state that "*They* attempt to challenge LDEQ's final permit actions" because TELC is not attempting to challenge anything. See id. (emphasis added). APPEAL was the client originally and that case is over. Now, Petitioners are the clients, and because the ultimate decision-making authority lies with the client, not the attorney, TELC's representation in both cases does not create the close alignment of parties needed to satisfy res judicata.

Similar to the plaintiffs in Elliott, 425 F.2d at 1148, Petitioners here, who are entirely new parties, raising new issues, and who were in no way involved in the APPEAL proceeding, should not be bound by any previous decision or adjudication. "The opportunity to be heard is an essential requisite of due process of law in judicial proceedings. Giving conclusive effect to a prior judgment against one who is neither a party nor in privity with the party therein contravenes due process." Thomas v. Janzen, 800 So.2d at 89.

### C. Belle's Claim that Prescription Has Resulted in Res Judicata is Incorrect Factually and Legally.

In its Exceptions, Belle asserts that the period to challenge LDEQ's final permit action on any ground other than compliance with La. R.S. §30:2157 has prescribed, and therefore "the final permit action is res judicata for all persons on all issues other than Belle's compliance with La. R.S. 30:2157." Belle Exceptions at 2-3. The only support Belle offers for its stance is a citation, without discussion, to Save Our Wetlands, Inc. v. Department of Environmental Quality, 2000-2809 (La. App. 1 Cir. 2/15/02); 812 So.2d 746, a case that involved one appellant challenging the issuance of a single permit.

There, the 1st Circuit found that, because the appellants had missed the deadline to challenge the LDEQ decision by a matter of weeks, the court did not have appellate jurisdiction. The court stated that "[w]hen the time fixed for appealing has elapsed, the administrative ruling in question becomes res judicata." *Id.* at 749.

Belle's reference to this case is misleading, and its use of this case to support its res judicata argument begs the question. Belle must first prove that prescription has, indeed, run on Petitioners' appeal before it can claim a res judicata effect consistent with this opinion. Yet, as argued below, Belle offers no law to show that prescription has run on Petitioners' appeal. As

discussed below, and unlike the Petitioners in Save Our Wetlands, Petitioners were well within the 30-day deadline prescribed in La. R.S. §30:2050.21(A) for appeal of the LDEQ's July 2, 2008, decision. Petitioners are not appealing the August 15, 1997, decision.

Belle makes much of the fact that LDEQ made findings back in 1997 on the wetlands issue and faulting issues, which the plaintiff in that litigation, APPEAL, did not challenge. Belle somehow concludes that the result of this failure results in both prescription and res judicata as to Petitioners' challenge. Belle provides no legal support for this conclusion. La. R.S. §30:2050.21(A) is the only statute which dictates a time period for filing an action, and Petitioners are well within the 30-day period for filing their challenge to the July 2, 2008, decision of LDEQ. The fact that LDEQ did not issue findings on the faulting or wetlands issues in its July 2, 2008, decision does not render the decision any less defective with regard to these issues.

## II. PETITIONERS ARE NOT PRESCRIBED FROM CLAIMING THAT (1) BELLE DID NOT COMPLY WITH WETLANDS SITING REGULATIONS, (2) BELLE HAS NOT DEMONSTRATED THAT IT MEETS LOCAL ZONING REQUIREMENTS, AND (3) BELLE'S PROPOSED SITE IS LOCATED ON A FAULT LINE.

First, in neither its prescription exception nor its memorandum in support of its prescription exception does Belle cite a single codal article, statutory provision, or jurisprudence to support its argument that Petitioners' claims have prescribed.[2] Belle entire exception rests on arguments of counsel and facts from the 1997 LDEQ permit decision. However, proper application of law and relevant facts proves that Belle's prescription exception is without merit.

### A. Petitioners' Claims Have Not Prescribed Because They Challenge the LDEQ Final Permit Action of July 2, 2008, Not the Decision of August 15, 1997.

First, Belle's prescription exception rests on a fundamental misunderstanding of the nature of Petitioners' appeal and the governing law on appeals of LDEQ actions.

Citizen appeals of LDEQ actions are governed by La. R.S. §30:2050.21(A). This provision dictates that aggrieved persons may appeal LDEQ "final permit actions" by filing a petition with the 19th Judicial District Court within 30 days of notice of that action. *Id.* The final permit action which Petitioners challenge in this judicial review is the July 2, 2008, LDEQ decision to issue, or reissue, a solid waste permit to Belle. Record at 4891-4906. LDEQ gave

[2] The only law cited in this entire exception discussion is jurisprudence on peripheral issues, such as when the time period for appeal begins to run. Memorandum in Support of Exceptions of Intervenor ("Belle Memorandum") at 4.

notice of the final permit in question here on July 16, 2008, and Petitioners filed their Petition for Review 19 days later on August 4, 2008. Therefore, Petitioners timely filed their challenge, and are not prescribed from any claim related to the challenged final permit action, including ones alleging that Belle did not comply with wetlands siting regulations, has not demonstrated that it meets local zoning requirements, and is proposing a site located on a fault line.

In its exception, Belle repeatedly references representations it made in its original permit application and findings LDEQ made in its original 1997 decision to issue Belle a solid waste permit. It alleges, as to these findings, that Petitioners were required to challenge these findings back in 1997. Belle misses the point entirely. Petitioners are not challenging the August 15, 1997, final permit action; they challenge the July 2, 2008, final permit action granting Belle its permit. As to this July 2, 2008 decision, LDEQ issued a Basis for Decision and a Public Comment Response Summary on that same date. There can be no question that the July 2, 2008, decision is a final permit action, separate and distinct from the final permit action issued by LDEQ on August 15, 1997. Petitioners' claims have not prescribed.

### B. Belle's Argument That Petitioners' Wetlands and Faulting Issues Are Prescribed Because These Issues Could Have Been Challenged in the 1997 Litigation is Without Merit.

As discussed above, because Petitioners challenge the July 2, 2008, LDEQ final permit action and not the August 15, 1997, LDEQ final permit action, facts surrounding the 1997 final permit action are irrelevant. However, in its exception memorandum, though not in the prescription section, Belle argues that the grounds alleged in this appeal "could have been raised in those [the 1997] proceedings but were not for reasons known only to TELC." Belle Memorandum at 7. Belle apparently concludes from this that these grounds are prescribed.

This argument fails both because of the differences in the administrative records underlying the original 1997 appeal and the instant 2008 appeal and because of Belle's fundamental misunderstanding of who the parties are in the appeals.

First, as to the record, during its review of Belle's initial permit application, in 1994-1997, LDEQ compiled a record of decision. This record consisted of Belle's various application submissions, LDEQ's correspondence regarding these submissions, correspondence from related agencies, and public comment. The 1997 litigation filed by APPEAL challenged the August 15, 1997, decision to issue Belle a solid waste permit based upon that record. It is that record which

the Court reviews to determine whether the agency's decision should be reversed or upheld. In the 1997 record, there was no indication in the materials provided by Belle or other parties that the proposed site was located on wetlands. Therefore, APPEAL did not challenge LDEQ's decision at that time that the wetlands requirement in the regulation was "not applicable."

However, the record of decision underlying the instant appeal is different, and contains ten years of updated information from 1997-2008 not available or existing in August 1997. Indeed, were it not for the updated nature of the record, Belle would have no claim that it has now satisfied the Emergency Response Statute, because that claim, and LDEQ's finding in that regard, is based on supplemental information provided by Belle after this Court's 1998 decision invalidating the original permit. Petitioners' appeal is based on this new record, and the new record is what this Court will review to determine whether to uphold LDEQ's July 2, 2008, decision.

Included in the record on this appeal is a letter issued on January 16, 2003, long after the original 1997 permit decision but during the LDEQ's second period of review, from the U.S. Army Corps of Engineers, New Orleans District, informing Belle (and copying the LDEQ) that current data available to it concerning the proposed Belle landfill site "are indicative of the occurrence of wetland areas subject to Corps' jurisdiction." Because of this new information, in March of 2005, LDEQ sent a Notice of Deficiencies letter to Belle requesting, among other things, that "[i]f wetlands are present at the site, LAC 33:VII.709.A4 [regarding a wetlands demonstration] must be addressed." Belle never resolved this deficiency, choosing instead to disregard LDEQ's position and maintaining that it need not submit the required wetlands information until after the permit was issued. LDEQ has stated that "[t]he absence of any of these determinations and/or demonstrations makes [Belle's] application incomplete." Thus, the absence of a challenge to an issue in 1997 does not mean a claim on that same general issue has prescribed in 2008 when the 2008 LDEQ decision is based on an entirely new record. The new record reveals an illegality in the 2008 permit with respect to the required wetlands demonstration; the old record revealed no illegality in this regard.

Second, this claim by Belle ignores the fact that Petitioners are new parties, and appears to argue that TELC is the party on both appeals. As stated earlier, TELC is not a party to either

appeal, any more than Lemle & Kelleher is party to this appeal or Taylor, Porter, Brooks and Philips was a party to the previous appeal.

Further, even if the original permit would have been upheld as a result of the 1997 litigation, the five-year permit period would have expired twice by now, and would have to have been reissued twice by LDEQ. Each of these reissuances would have constituted a final permit action subject to appeal by aggrieved persons. Surely Belle would not argue under those circumstances that parties who did not challenge the original permit issuance could not challenge the reissuance. This situation is no different.

Demanding that LDEQ and this Court only consider factual scenarios from over ten years ago is contrary to the notion that agencies are "neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday." See American Trucking Ass'ns v. Atchison, T. & S. F. Ry. Co., 387 U.S. 397, 416 (1967). In summary, Petitioners are not prescribed from making the claims that Belle did not meet the wetland, zoning, and fault line requirements because (1) Petitioners meet the requirements of La. R.S. §30:2050.21 and (2) circumstances exist now that did not exist in 1997 that mandate that LDEQ require a wetlands determination before it can legally issue a solid waste permit to Belle.

## III. THIS COURT HAS SUBJECT MATTER JURISDICTION TO CONSIDER ALL OF PETITIONERS' CLAIMS.

The Louisiana Constitution provides for the appellate jurisdiction of district courts in Article 5, Section 16(B) by stating: "A district court shall have appellate jurisdiction as provided by law." The Louisiana Environmental Quality Act provides for appellate jurisdiction over LDEQ permit decisions in La. R.S. §30:2050.21(A), when it provides: "An aggrieved person may appeal devolutively a final permit action, a final enforcement action, or a declaratory ruling ***only to the Nineteenth Judicial District Court.***" La. R.S. §30:2050.21(A) (emphasis added). Therefore, this Court's subject matter jurisdiction over this appeal of an LDEQ final permit action has been expressly provided by law.

On page 6 of its memorandum discussing its subject matter jurisdiction exception, Belle alleges that "Petitioners seek in this proceeding in effect, to have the district court overrule a superior court." While Belle never explains how this allegation relates to the issue of subject matter jurisdiction, it does touch on an issue that has created some confusion with regard to this

appeal. It is true that the 1st Circuit's order effectively prohibited LDEQ from considering issues beyond the emergency response statute. However, the 1st Circuit's order was directed to the LDEQ, and what it could consider. It did not expressly remove subject matter jurisdiction from this Court over all other issues, nor could it. Louisiana "is a civilian jurisdiction in which legislation, the solemn expression of the legislative will, is the superior source of law." Willis-Knighton Medical Center v. Caddo Shreveport Sales and Use Tax Com'n, 903 So.2d 1071, 1087 (La. 2005). Thus, even if the 1st Circuit opinion is construed as intending to limit the subject matter jurisdiction of this court, it cannot override the subject matter jurisdiction granted this Court in La. R.S. §30:2050.21(A).

However, Petitioners are not asking this Court to overrule the First Circuit; they are merely asking this Court to assume its role, and Constitutional duty, as sole reviewer of LDEQ final permit actions, to invalidate the July 2, 2008, LDEQ permit that violates, among other things, La Admin. Code tit. 33, pt.VII, § 521.A.1. f. which requires permit applicants to provide a "wetlands demonstration, if applicable, as provided in LAC 33:VII.709.A.4," and the Emergency Response Statute. LDEQ itself has made clear its opinion that Belle did not meet the wetland requirement.

On July 2, 2008, LDEQ issued Belle an illegal permit and it is the duty of this Court to overturn it. The Louisiana First Circuit Court of Appeal itself stated in In re Rubicon, 95-0108 (La. App. 1 Cir. 2/14/96); 670 So. 2d 475, 481: "Under the state constitution, we, as the reviewing court of all final DEQ decisions, have a duty to protect the environment 'insofar as possible and consistent with the health, safety, and welfare of the people' . . . To fulfill this constitutional duty, we must review final decisions of the DEQ to ensure that they comport with applicable constitutional, statutory and regulatory requirements." This is what Petitioners ask this Court to do.

Furthermore, nowhere in the First Circuit opinion does the court state that the Nineteenth Judicial District Court lacks subject matter jurisdiction to consider the claims of these new Petitioners regarding the wetlands determination, zoning requirements, and location of the site on a fault line. See In re Belle, 978 So.2d at 986. It stated that LDEQ did not have the authority to consider issues not on remand and then instructed this Court to issue a writ of mandamus in favor of Belle directing the LDEQ to render a final decision. Because the effect of that decision

was the issuance of an illegal permit, this Court now has subject matter jurisdiction to review the newly issued permit for *all* alleged errors and overturn it accordingly.

Just because the order of remand by this Court (and the affirmation by the First Circuit) directed Belle to submit to LDEQ information to satisfy the emergency response statute, La. R.S. §30:2157, should not have precluded LDEQ from reconsidering other issues before issuing the permit, nor does it preclude this Court from reviewing all aspects of the permit to ensure its legality. The U.S. Supreme Court has carefully distinguished the "familiar doctrine that a lower court is bound to respect the mandate of an appellate tribunal and cannot reconsider questions which the mandate has laid at rest" from the rule that applies when courts review the action of executive-branch administrative agencies. Fed. Commc'n Comm'n v. Pottsville Broad. Co., 309 U.S. 134, 145 (1940). The Court explained, "[A]n administrative determination in which is imbedded a legal question open to judicial review *does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge*. Id. (emphasis added). Similarly, in Permian Basin, 390 U.S. at 784, the U.S. Supreme Court distinguished the functions of an administrative agency from that of a lower court, reasoning that "administrative authorities must be permitted, consistently with the obligations of due process, to adapt their rules and policies to the demands of changing circumstances." In American Trucking, 387 U.S. at 416, the U.S. Supreme Court noted that "[r]egulatory agencies do not establish rules of conduct to last forever," they are supposed "to adapt their rules and practices to the Nation's needs in a volatile, changing economy." Id. Thus, executive branch agencies are "neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday." Id.

Therefore, LDEQ has an ongoing duty to assess whether *all* aspects of Belle's solid waste permit are legal, and to argue that the Nineteenth Judicial District Court lacks subject matter jurisdiction to review *all* aspects of that permit on appeal is inconsistent with LDEQ's constitutional duty to comply with the law and to protect the public. See, e.g., Save Ourselves, Inc. v. La Env'l Control Comm'n, 452 So.2d 1152, 1157 (La. 1984) (recognizing a regulatory agency's duty, under La. Const. art. IX § 1, to act as the "primary public trustee of natural resources and the environment."). To hold that this Court may not review issues in the permit that were last addressed over ten years ago is contrary to U.S. Supreme Court opinion that

executive branch agencies are not "supposed to regulate the present and the future within the inflexible limits of yesterday." See American Trucking, 387 U.S. at 416.

Simply put, LDEQ has issued an illegal permit for the reasons specified in Petitioners' Petition and Brief. The 1st Circuit's ruling does not apply to Petitioners because they were not parties to that appeal. This Court can and should entertain their request for judicial review and should deny Belle's exceptions.

## CONCLUSION

For all of the foregoing reasons, Belle's exceptions must be overruled.

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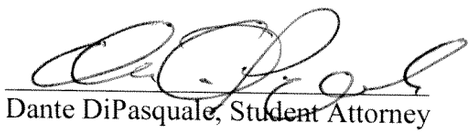
**CERTIFICATE OF SERVICE**

I certify that a copy of the above and foregoing pleading has been served upon all counsel of record via electronic transmission this 16th day of April, 2009.



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