

LOUISIANA ENVIRONMENTAL ACTION NETWORK AND JUANITA STEWART

488025 NUMBER _____, DIV. "F"

19TH JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF LOUISIANA

FILE COPY

PETITION FOR REVIEW

Nature of Case

The Louisiana Environmental Action Network ("LEAN") and Ms. Juanita Stewart ("Plaintiffs"), appearing through undersigned counsel, appeal from a Louisiana Department of Environmental Quality ("LDEQ") final decision pursuant to La. R.S. 30:2050.21(A). Plaintiffs challenge LDEQ's grant of State Permit Modification No. 0840-00010-02, on approximately August 21, 2001, to Port Hudson Operations, Georgia Pacific Corporation ("Georgia Pacific"). Plaintiffs file this appeal because LDEQ's granting of this permit modification threatens the health, welfare and safety of the Plaintiffs and LEAN's members.

Background Information

- 2. On June 27, 2001, LDEQ published a public notice that they were considering granting a permit modification to Georgia Pacific to establish facility-wide baseline emissions pursuant to the Settlement Agreement dated June 12, 2000 between Georgia Pacific and LDEQ. The permit modification applies to Georgia Pacific's Port Hudson facility in Zachary, East Baton Rouge Parish, Louisiana.
3. After issuing the public notice, LDEQ received comments in opposition to the proposed modification, including comments from Plaintiffs. Plaintiffs' comments focused on the failure of Georgia Pacific and LDEQ to comply with state and federal permitting requirements.

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4. The air quality in East Baton Rouge Parish violates federal health protection standards for ozone pollution and, therefore, has been classified a serious nonattainment area.
5. The permit modification increases allowable emissions of volatile organic compounds by 2266.14 tons per year. Volatile organic compounds react with heat and sunlight to form ground-level pollution causing, among other problems, damaged lung tissue.
6. On approximately August 21, 2001, the LDEQ approved Georgia Pacific's proposed permit modification. Notice of the approval was mailed to Plaintiffs on August 21, 2001.
7. Plaintiff LEAN is an environmental organization created for the purpose of protecting the interests of their members in a healthy and safe environment. These interests will be directly and irreparably harmed by the decision of LDEQ to grant this permit modification.
8. Plaintiff Juanita Stewart, a resident of Louisiana who lives and recreates in East Baton Rouge Parish, seeks to protect her interests in a healthy and safe environment. These interests will be directly and irreparably harmed by LDEQ's decision to grant this permit modification.
9. Plaintiffs and LEAN's members have a real and actual interest in this matter because they live, recreate, and/or work in East Baton Rouge Parish. Plaintiffs and LEAN's members are directly impacted by LDEQ's decision to grant this permit modification.
10. Plaintiffs and LEAN's members have a fundamental interest in this Action under Article IX, Section 1, of the Louisiana Constitution of 1974, which provides the constitutional right of each citizen to the protection of the state's natural resources, including water and air, and the healthful, scenic, historic, and aesthetic qualities of the environment.
11. Plaintiffs and LEAN's members have a direct and substantial interest in ensuring that LDEQ adheres to the laws and regulations governing air emission permits and environmental quality.
12. Plaintiffs and LEAN's members are concerned about the environmental degradation that will result from the proposed permit modification.

13. Plaintiffs and LEAN's members are aggrieved by the decision of LDEQ to grant the permit modification to Georgia Pacific in violation of applicable law and procedure. Plaintiffs and LEAN's members will be adversely affected by LDEQ's decision.

Assignments of Error

The Plaintiffs designate the following assignments of error:

14. LDEQ's granting of Georgia Pacific's permit modification violates LDEQ's duty as primary public trustee of the environment under Article IX, Section 1 of the Louisiana Constitution and the Louisiana Environmental Quality Act ("LEQA") because LDEQ failed to conduct appropriate analyses to protect the environment "insofar as possible and consistent with the health, safety, and welfare of the people," to the detriment of Plaintiffs and LEAN's members who are beneficiaries of the public trust.
15. LDEQ's granting of Georgia Pacific's permit modification violates LDEQ's duty under Article IX, Section 1 of the Louisiana Constitution and LA R.S. 30:2018(B)(1) by failing to consider and address the potential and real adverse environmental effects of the proposed permit, including those specific to East Baton Rouge Parish.
16. LDEQ's granting of Georgia Pacific's permit modification violates Article IX, Section 1 of the Louisiana Constitution and LEQA by failing to consider and address the cumulative impacts on East Baton Rouge Parish including, but not limited to, the increased damage to the air quality due to increases in the emission of volatile organic compounds.
17. LDEQ's granting of Georgia Pacific's permit modification violates Article IX, Section 1 of the Louisiana Constitution and LA R.S. 30:2018(B)(2) because LDEQ failed to perform a cost benefit analysis of the environmental costs balanced against the social and economic benefits of the project and failed to demonstrate that the significant costs to the citizens of Louisiana do not outweigh the limited benefits of the permit to the citizens of Louisiana.
18. LDEQ's granting of Georgia Pacific's permit modification violates LDEQ's duty under Article IX, Section 1 of the Louisiana Constitution and LA R.S. 30:2018(B)(3) because LDEQ failed to consider alternatives to the proposed activity which would offer more protection to the environment than the proposed permit.

19. LDEQ's granting of Georgia Pacific's permit modification violates LDEQ's duty under Article IX, Section 1 of the Louisiana Constitution and LEQA because LDEQ failed to consider and implement mitigating measures which would offer more protection to the environment than the proposed permit.
20. LDEQ's granting of Georgia Pacific's permit modification violates LEQA 30:2018(A) because LDEQ failed to require Georgia Pacific to submit the mandatory environmental assessment statement as part of its permit application.
21. LDEQ's granting of Georgia Pacific's permit modification violates LEQA 30:2018(C) because LDEQ failed to conduct a public hearing upon the environmental assessment statement.
22. LDEQ's granting of Georgia Pacific's permit modification violates LEQA 30:2018(C) because LDEQ failed to ensure that Georgia Pacific submitted copies of the environmental assessment statement to the local governmental authority and designated public library where the project is located.
23. LDEQ's granting of Georgia Pacific's permit modification violates LDEQ's duty under Article IX, Section 1 of the Louisiana Constitution and LEQA because LDEQ failed to adequately detail its basic findings of fact, ultimate findings, or reasons supporting its decision.
24. LDEQ's granting of Georgia Pacific's permit modification violates LDEQ's duty under Article IX, Section 1 of the Louisiana Constitution and LEQA because the issued decision is not rationally supported by the record and evidence.
25. LDEQ's granting of Georgia Pacific's permit modification is arbitrary and capricious, an abuse of discretion, manifestly erroneous, and not supported by a preponderance of the evidence because LDEQ completely disregarded the detrimental impact of the project on the surrounding communities.
26. LDEQ's granting of Georgia Pacific's permit modification has prejudiced substantial rights of Plaintiffs and LEAN's members as defined by LA R.S. 49:964(G) because LDEQ's decision is in violation of constitutional and statutory provisions; is in excess of the statutory authority of the agency; is made upon unlawful procedure; is affected by other error of law; is arbitrary or capricious or characterized by abuse of discretion

or clearly unwarranted exercise of discretion; and is not supported and sustainable by a preponderance of the evidence.

Designation of Record for Appeal

27. With the exception of information submitted by Georgia Pacific after the close of the public comment period on July 30, 2001, Plaintiffs designate the entire record compiled by LDEQ prior to the granting of the permit modification on approximately August 21, 2001. Plaintiffs also designate the June 5, 2000 comments by Attorney General Richard P. Ieyoub and the June 12, 2000 Settlement Agreement. Plaintiffs specifically limit this designation to exclude any information submitted by Georgia Pacific after the public close of the comment period, as the public, including Plaintiffs, never had an opportunity to review and comment on this information as required by law.

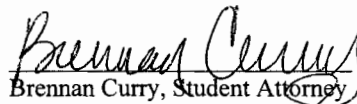
Prayer for Relief


28. Upon consideration of the law and facts in this case, Plaintiffs respectfully request that this Court grant relief as follows:

- A. Vacate LDEQ's State Permit Modification No. 0840-00010-02;
- B. Assign all costs in this matter, including allowable attorney fees, to the defendant LDEQ;
- C. Award all other relief as this Court finds equitable.

September 21, 2001

Respectfully submitted,


Brennan Curry, Student Attorney


Alison Hoyt, Student Attorney
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Counsel for Plaintiff Juanita Stewart



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Attorney for Plaintiffs Louisiana
Environmental Action Network and
Juanita Stewart

Sheriff Please Serve:

Mr. Barry Brooks
Louisiana Department of Environmental Quality
Office of the Secretary
7290 Bluebonnet Blvd.
Baton Rouge, LA 70884-3363

LOUISIANA ENVIRONMENTAL
ACTION NETWORK AND
JUANITA STEWART

* NUMBER _____, DIV. " _"
*
* 19TH JUDICIAL DISTRICT
* COURT

VERSUS

* PARISH OF EAST BATON
* ROUGE

LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

* STATE OF LOUISIANA
*

ORDER

The Petition for Review on behalf of the Louisiana Environmental Action Network and Ms. Juanita Stewart appealing the Georgia Pacific State Permit Modification has been received and filed with the Court on _____, 2001.

The record designated by the Plaintiffs shall be compiled and forwarded to the Nineteenth Judicial District Court, and the appeal shall be returnable to _____ on the _____ day of _____, 2001.

Signed in Baton Rouge, Louisiana on this _____ day of _____, 2001.

District Judge
Nineteenth Judicial District Court

LOUISIANA ENVIRONMENTAL
ACTION NETWORK AND
JUANITA STEWART

* NUMBER _____, DIV. " _"
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* 19TH JUDICIAL DISTRICT
* COURT

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LOUISIANA DEPARTMENT OF
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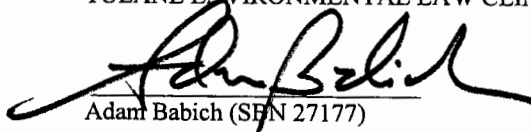
* STATE OF LOUISIANA

**SUPERVISING ATTORNEY'S INTRODUCTION OF STUDENT ATTORNEYS
AND NOTICE OF APPROVAL OF STUDENT APPEARANCE**

Undersigned counsel respectfully introduces student attorneys Brennan Curry and Alison Hoyt to this Court pursuant to Rule XX. As the student attorneys' supervising attorney, I approve of the student attorneys' appearance in this case. The applicable client's written consent to an appearance by a student attorney in this matter is submitted as Exhibit A to this pleading.

Respectfully submitted September 21, 2001,

TULANE ENVIRONMENTAL LAW CLINIC


Adam Babich (SFN 27177)

19th JUDICIAL DISTRICT
EAST BATON ROUGE PARISH, LA
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CLIENT'S WRITTEN CONSENT FOR STUDENT ATTORNEY APPEARANCE

I hereby grant my consent for student attorneys from the Tulane Environmental Law Clinic to appear on my behalf in any matter in which the Tulane Environmental Law Clinic represents me, whether in Court or before an administrative tribunal.

Dated: September 20, 2001

[signed:]
[name:]

Juanita Stewart
Juanita Stewart

Exhibit A