

STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
DOCKET NO. 2021-293-DNR-OOC

IN THE MATTER OF: LOUISIANA WETLANDS, LLC AND NEW 90, LLC V.
CHEVRON U.S.A. INC. AND SOUTHERN NATURAL GAS COMPANY, L.L.C.

AGENCY NO. 016-054-002
AGENCY NO. 016-054-003

ON REFERRAL FROM THE 16TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF ST. MARY

STATE OF LOUISIANA

DOCKET NO. 130-527

DIVISION "B"

LOUISIANA WETLANDS, LLC, ET AL.

VERSUS

ENERGEN RESOURCES CORP., ET AL.

**CHEVRON U.S.A. INC. AND SOUTHERN NATURAL GAS COMPANY, L.L.C.'S
MOTION IN LIMINE TO EXCLUDE EVIDENCE OF OPERATIONS AND
CONTRACTUAL OBLIGATIONS AND INCORPORATED MEMORANDUM IN
SUPPORT**

All evidence regarding Chevron U.S.A. Inc. and Southern Natural Gas Company, L.L.C.'s oil and gas operations and alleged breach of contractual obligations should be excluded from the February 23, 2021 limited admission hearing. Chevron U.S.A. Inc. ("Chevron") and Southern Natural Gas Company, L.L.C. ("SNG") each filed a Limited Admission under Act 312, such that the Act 312 Panel will formulate the most feasible plan to address "environmental damage" at Areas 1, 2, 3, and 8 on the subject property. Because this hearing focuses solely on addressing environmental damage, and not on issues related to private liability claims, evidence regarding Chevron's and SNG's historical oil and gas operations or alleged breach of contractual obligations would result in a waste of time and resources. This evidence should therefore be excluded.

Law and Argument

The sole issue before this Panel is how to address “environmental damage” at Areas 1, 2, 3, and 8 on the subject property. The extent of “environmental damage” on the Plaintiff’s property is relevant; the history of Chevron and SNG’s operations on the property and the question of whether Chevron or SNG breached contractual obligations are not.

Act 312 allows a defendant to make a “limited admission” of responsibility for “environmental damage” and take “responsibility for implementing the most feasible plan to evaluate, and if necessary, remediate all or a portion of the contamination that is the subject of the litigation to applicable regulatory standards.” La. Code Civ. Proc. Art. 1563(A)(1). When a defendant makes a limited admission, such as Chevron and SNG did here, an Act 312 Panel holds a public hearing “**to approve or structure a plan**” which it determines to be the most feasible under the relevant regulatory standards to address “environmental damage”. La. Code Civ. Proc. Art. 1563(A)(2) (emphasis added). The Act 312 Panel is not tasked with overseeing a full trial on the merits of Plaintiff’s claims in its lawsuit; in other words, the questions of *how* or *why* the “environmental damage” occurred have no place in the streamlined Act 312 hearing process.

The express purpose of the Act 312 hearing is to determine how the “environmental damage” at Areas 1, 2, 3, and 8 should be addressed. Evidence or testimony regarding historic oil and gas operations and any alleged breach of contractual obligations will not assist the Act 312 Panel in determining the most feasible plan for remediating damage and should therefore be excluded.

This Issue Should be Decided in Advance of the Hearing

Pre-hearing resolution of this issue will allow the hearing to proceed efficiently to resolution. Plaintiff has made clear in his response to Chevron's Limited Admission Plan that he will attempt to inject irrelevant operational issues into this procedure.

Plaintiff's comment on Chevron's Limited Admission Plan argues, for example, that Chevron "failed to even supply relevant historical materials to LDNR going directly to the prudence of Chevron's past operations, such that the Department has no basis on which to conclude whether Chevron's operations were prudent and reasonable at all."¹ Plaintiff has of course filed a lawsuit, and that lawsuit is set for trial in August 2021. Plaintiff will doubtless raise his complaints with Chevron's and SNG's operations in that forum. It is not the role of the LDNR nor the purpose of the Act 312 hearing to examine the reasonableness of historical operations. Rather, the purpose of this hearing is to fashion the most feasible plan to address the "environmental damage" at the subject property. Argument over whether the historical operations at the subject property were "prudent or reasonable" will not serve that purpose.

As another example of Plaintiff's efforts to shift the focus of the Act 312 hearing, Plaintiff cites to alleged operational issues concerning Well No. 66581, and claims that Chevron's conduct breached its contractual obligations to Plaintiff.² Again, this is a legal issue for the Court to decide, and has no relevance to the formulation of the most feasible plan. While Plaintiff attempts to find relevancy in Chevron's operational history by claiming that it relates to the source of

¹ Plaintiff's Response to Chevron U.S.A. Inc.'s Limited Admission Plan at pg. 4.

² *Id.* at p. 5 ("The LDNR must not condone conduct that constitutes a breach of Chevron's contractual obligations owed to the plaintiff in this case by approving a Most Feasible Plan that fails to comply with 29B.").

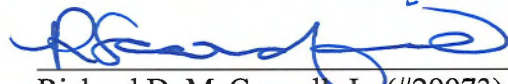
environmental damage, he presents no empirical evidence to support this alleged connection, despite the wealth of sampling data from this area. Should Plaintiff attempt to question the source of the environmental damage in the vicinity of the 66581 well (Chevron's Area 2), it should do so using the scientific data developed from the site, not a vague reference to operations from a document created more than fifty years ago.

Plaintiff specifically injected operational and contractual issues into his response to the limited admission plans, and there is no reason to doubt that he will attempt to do so at the hearing. Granting this motion will focus the hearing on the scientific data and prevent the wasteful pursuit of unsupported and irrelevant theories.

Conclusion

Chevron and SNG have admitted responsibility under Act 312 for certain areas of environmental damage on the subject property. The purpose of the Act 312 hearing is to assist the Panel in determining the most feasible plan to address that environmental damage. Evidence or testimony regarding historical oil and gas operations on Plaintiff's property should not be allowed because it is irrelevant, and its introduction will result in an unnecessary waste of the Panel's time and resources. Accordingly, Chevron U.S.A. Inc. and Southern Natural Gas Company, L.L.C. request that their motion be granted, and any evidence regarding Chevron and SNG's oil and gas operations on the Plaintiff's property and alleged breach of contractual obligations be excluded from evidence.

Respectfully submitted:



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CERTIFICATE OF SERVICE

I certify that a copy of this document has been transmitted to all counsel of record, the Louisiana Department of Natural Resources Commissioner of Conservation, the Panel members, and the Louisiana Division of Administrative law by electronic mail on this 12th day of February 2021.



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