



Tulane Environmental Law Clinic

April 21, 2015

Via U.S. Mail & E-mail (DEQ.PUBLICNOTICES@LA.GOV)

LDEQ, Public Participation Group

Attn: Elizabeth Johnson

P.O. Box 4313

Baton Rouge, LA 70821-4313

RE: Comments Opposing Southern Aggregates, LLC's Water Quality Certification Application for an Aggregate Mining Operation, Permit # WQC 140708-02, AI # 192689, Permit # MVN-2014-1463-CU, and Activity # CER20140001

Dear Ms. Johnson:

Save Our Hills,¹ Louisiana Environmental Action Network² (LEAN), and Mr. Oneil Couvillion³ respectfully submit the following comments on Southern Aggregates' application for a Water Quality Certification (WQC) to dredge and fill 12.91 acres of wetlands for a sand and gravel mine ("proposed project").

Southern Aggregates' proposed project would damage the environment, impose hardship to the local community, and cause millions of dollars in losses to the local economy. The project would degrade the water quality of the Amite River, which already fails to meet water quality standards. It would also pollute Spillers Creek. Southern Aggregates' operations would impose costs on the local community, particularly Oak Hills Subdivision, a +224 residential subdivision located within 200 feet of the operation, that would outweigh any of the project's benefits. This project would cost these local residents millions in financial loss and subject them to years of hazardous living conditions. Southern Aggregates has not avoided these costs to the maximum extent possible and could pursue alternative projects to avoid these costs. In light of Southern Aggregates' existing reserves, the burden this project would impose on its neighbors is

¹ Save Our Hills is a group composed of hundreds of residents in and near the Oak Hills subdivision. The proposed strip mining operation would be located less than 200 feet away from this community with +224 homes.

² LEAN is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in Livingston Parish.

³ Oneil Couvillion is a resident of Denham Springs, Louisiana.

unnecessary. Because this project would degrade water quality in an already impaired river and because approval would violate LDEQ's duty as public trustee, the certification must be denied.

Additionally, there is insufficient information in the record to support approval. Because of the already impaired state of the Amite River, a scientifically valid, quantitative analysis would be needed to support any conclusion that the project would not further degrade the river. No such analysis is in the record. Also, the record lacks data to support an approval pursuant to LDEQ's duty as a public trustee under Louisiana Constitution, art. 9, § 1. To the contrary, the record shows that the environmental and social costs of this project outweigh benefits, especially in light of the testimony of a neighbor of a similar Southern Aggregates project. This type of intensive industrial activity is simply incompatible with a residential subdivision. Southern Aggregates' so-called alternatives study is inadequate to support a finding that there are no alternate projects, alternate sites, or mitigative measures that would offer more protection for the environment without unduly curtailing non-environmental benefits. The inappropriate locations that Southern Aggregates selected for its so-called alternatives study can only be explained by arbitrary selection criteria. The analysis, therefore, cannot meet the standard of Matter of Browning-Ferris Indus. Petit Bois Landfill, 93-2050 (La. App. 1 Cir. 6/23/95), 657 So. 2d 633, 639.⁴ Southern Aggregates' analysis does not explain why Southern Aggregates' existing reserves are inadequate when those reserves are capable of lasting over 27 years at current production rates.⁵ There is nothing in the record to justify destroying Louisiana residents' quality of life in the Oak Hills subdivision.

The record lacks LDEQ's analysis under Louisiana Constitution, art. 9, § 1. The Louisiana Supreme Court has explained the minimum requirements of a record in this regard: "to assure that the agency has acted reasonably in accordance with law ... the agency is required to make basic findings supported by evidence and ultimate findings which flow rationally from the basic findings."⁶ LDEQ's art. 9, § 1 analysis "must articulate a rational connection between the facts found and the order issued. ... This is particularly so ... where the agency performs as a public trustee and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute."⁷ To comply with administrative procedures, LDEQ's art. 9, § 1 analysis must be available in the record for public comment before any grant of a Water Quality Certification.⁸

Save Our Hills, LEAN, and Mr. Couvillion reserve the right to rely on all public comments submitted and request notice of any final decision and environmental analysis when such documents become available.

⁴ "[I]t appears inherently unreasonable in the mind of this court to limit consideration of alternative sites to arbitrary geographical boundaries where the potential benefits and risks of the proposed facility will impact a multi-parish, if not a multi-state region." 657 So. 2d at 639.

⁵ VantaCore, <http://vantacore.com/> (last visited March 1, 2015).

⁶ *Save Ourselves, Inc. v. Louisiana Env'tl. Control Comm'n*, 452 So. 2d 1152, 1159-60 (La. 1984).

⁷ *Id.*

⁸ See Judgment, *La. Env'tl. Action Network v. Fleet*, No. 445019 (La. 19th JDC, July 10, 2000) (attached).

- I. LDEQ CANNOT LAWFULLY ISSUE A WATER QUALITY CERTIFICATION BECAUSE THE PROJECT WILL CONTRIBUTE TO A VIOLATION OF WATER QUALITY STANDARDS IN THE AMITE RIVER AND THREATEN THE PUBLIC HEALTH OF THE OAK HILLS COMMUNITY.**
- a. LDEQ Must Deny the Water Quality Certification because the Project Will Contribute to a Violation of the Amite River’s Water Quality Standards.**

LDEQ must deny Southern Aggregates’ certification⁹ because pollution due to run-off or flooding from the project will compound the Amite River’s “use impairment” and thus violate Louisiana’s water quality standards. Louisiana’s Environmental Regulatory Code requires LDEQ to review Southern Aggregates’ certification applications “in terms of compliance with State Water Quality Standards, the approved Water Quality Management Plan for the water body affected by the activity, and applicable state water laws, rules, and regulations.” La. Admin. Code. tit. 33, § 1507.C.3. Louisiana’s water quality regulations further require that LDEQ “protect or enhance the quality of public waters for designated uses.” La. Admin. Code. tit. 33 § 1101.A.3-4. The Louisiana Administrative Code designates the Amite River south of La-37 for use as “Primary Contact Recreation, Secondary Contact Recreation, and Fish and Wildlife Propagation” La. Admin. Code. tit. 33 § 1123.E. As of 2012, Amite River did not support its designated use of fish and wildlife propagation. Final 2012 Integrated Report of Water Quality in Louisiana, 2012. The Final 2012 Integrated Report of Water Quality in Louisiana cited dissolved oxygen levels as a suspected cause of impairment.¹⁰ The suspected sources of impairment include clearance for site development. Southern Aggregates proposes a mining operation which will include clearance for site development, dredging and filling of wetlands and excavation of earthen material. Sand and gravel mines are a source of increased sediment loads to rivers and streams and nonpoint source pollutants come from runoff of sediment from haul roads, drainage of pollutants, including acid, sediment, salts, and metals. Recommended Best Management Practices: Nonpoint Source Pollution Sand & Gravel Mining Industry, Louisiana Department of Environmental Quality 5 (2007).¹¹ Sediments from mining operations could consist primarily of biologically inert materials which could potentially adversely affect the water body’s designated uses. *Id.* All of this activity

⁹ Under the Clean Water Act, if a company such as Southern Aggregates wants to dredge and fill wetlands, it must first apply for a federal permit. 33 U.S.C. §§ 1342, 1344. To receive a federal permit, the applicant must apply for a certification from the State certifying that the project complies with state effluent limitations and water quality standards. 33 U.S.C. §§ 1341(a)(1) (“No license or permit shall be granted if certification has been denied by the State.”). In Louisiana, LDEQ has authority to issue water quality certifications. *See* La. Rev. Stat. § 30:2074.

¹⁰ The oxygen dissolved in lakes, rivers, and oceans is crucial for the organisms and creatures living in it. U.S. Geology Survey, <http://water.usgs.gov/edu/dissolvedoxygen.html> (last visited February 27, 2015). As the amount of dissolved oxygen drops below normal levels in water bodies, the water quality is harmed and creatures begin to die off. *Id.*

¹¹ Available at <http://dnr.louisiana.gov/assets/docs/conservation/injectionmining/LouisianaRecommendedBMPs.pdf>.

will be done adjacent to Spillers Creek and Molers Bayou, both of which empty into the Amite River.

b. LDEQ Must Deny the Water Quality Certification because the Project Threatens the Public Health and Welfare of the Oak Hills Community.

LDEQ cannot certify the proposed project because it risks polluting Spillers Creek and threatens the health of the Oak Hills residents. Louisiana's water quality regulations require that LDEQ "protect the public health and welfare that might otherwise be threatened by degradation of water quality." La. Admin. Code. tit. 33 § 1101.A.3-4. Spillers Creek runs through the project operations, Oak Hills subdivision, and drains into the Amite River. Any runoff from discharged material will affect the local residences use of the creek for recreation and marring the creek's scenic view with debris. Sediment runoff can cause a continued cloudy condition of a stream, deterring its used for almost all recreational purposes. Recommended Best Management Practices: Nonpoint Source Pollution Sand & Gravel Mining Industry, Louisiana Department of Environmental Quality 5 (2007).¹² Local residents already complain of run-off from other mines draining into Spillers Creek as well as the flooding potential of Spillers Creek. *See* Heidi R. Kinchen, *Gravel Pit Concerns Go Beyond Water Quality*, The Advocate, Sept. 24, 2014.¹³ Southern Aggregates' other mining operations have caused flooding and dust migration, presenting a real risk of these same problems for the Spillers Creek water quality and the welfare of Oak Hills' residents. *See generally* Dupre Affidavit (attached and incorporated by reference).

c. LDEQ Cannot Lawfully Certify this Project Without Identifying the Applicable Water Quality Standards and Water Use Designations of the Amite River and Spillers Creek, and Then Showing, in Detail, How the Project Will Impact those Standards.

LDEQ must ensure that Southern Aggregates' dredge and fill will not degrade the water quality of the Amite River. This duty requires denial of the certification because the Amite River already does not meet water quality standards and a strip mining operation surrounding Spillers Creek (the Amite's tributary) will inevitably increase loadings to the creek and the river.

First, LDEQ must determine the applicable standards for Amite River and Spillers Creek, including designated uses and criteria. *See* La. Admin. Code. tit. 33, § 1101; La. Admin. Code. tit. 33, § 1113.A. "A criterion for a substance represents the permissible levels for that substance at which water quality will remain sufficient to support a designated use." *Id.* The criteria include the general criteria (aesthetics, color, floating suspended and settleable solids, toxic substances, nutrients, turbidity, flow and biological and aquatic community integrity) and the numerical criteria (pH, chlorides, sulfates, total dissolved solids and dissolved oxygen). La. Admin. Code. tit. 33, § 1113.B. LDEQ must also ensure Spillers Creek and the Amite River maintain their

¹² Available at

<http://dnr.louisiana.gov/assets/docs/conservation/injectionmining/LouisianaRecommendedBMPs.pdf>.

¹³ Available at <http://theadvocate.com/news/weeklies/10252902-123/gravel-pit-concerns-go-beyond>.

recreational uses and support the preservation and propagation of desirable species of aquatic biota and indigenous species of wildlife. La. Admin. Code. tit. 33, § 1109.B.

Next, in order to grant the certification, LDEQ would have to show, in detail, how the project will protect those standards. Because the Amite River already violates water quality standards, that analysis requires use of scientific techniques for predicting the effects of industrial activity on water quality, which include water quality modeling. *Cf.* *Deep River Citizens' Coal. v. N.C. Dep't of Env't and Nat. Res.*, 598 S.E.2d 565, 569 (N.C. 2004) (upholding a water quality certification where the agency used computer models to predict the effects a proposed project had on water quality).

The record lacks scientifically valid, quantitative analysis and is inadequate to support certification of this project. LDEQ has not analyzed the potential impact on Spillers Creek, Moler Bayou, or the Amite River. Without sufficient evidence and adequate amount of data, LDEQ cannot verify that the proposed dredging activity complies with the water quality standards and cannot certify the project. *See In re West Pearl River Navigation Project*, 94-2660 (La. App. 1 Cir. 6/23/95), 657 So. 2d 640, 642 (Reversing LDEQ's certification of a dredge and fill project along the West Pearl River since LDEQ's certification contained an "inadequate amount of data" to characterize sediment quality.)

Water Quality Analysis documentation in this matter should respond fully to (but not be limited to) the following reasonable concerns:

- Quantitatively, what will be the increase in sediment loads to Spillers Creek and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the increase in sediment loads to the Amite River and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the increase in turbidity rates (in nephelometric turbidity units) to Spillers Creek and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the increase in turbidity rates (in nephelometric turbidity units) to the Amite River and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the increase in total suspended solids in Spillers Creek and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the increase in total suspended solids in the Amite River and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the impact on dissolved oxygen levels in Spillers Creek and what methodology supports LDEQ's conclusion in this respect?
- Quantitatively, what will be the impact on dissolved oxygen levels in the Amite River and what methodology supports LDEQ's conclusion in this respect?
- What will be the impact on recreational uses of the Amite River and what methodology supports LDEQ's conclusion in this respect?
- What will be the impact on recreational uses of the Spillers Creek and what methodology supports LDEQ's conclusion in this respect?

- What will be the impact on the propagation of desirable species of aquatic biota and indigenous species of wildlife of the Amite River and what methodology supports LDEQ's conclusion in this respect?
- What will be the impact on the propagation of desirable species of aquatic biota and indigenous species of wildlife of Spillers Creek and what methodology supports LDEQ's conclusion in this respect?

When a Water Quality Analysis is made available for public review and comment, please provide written notice of that review period to affected members of the public and their representatives, including without limitation:

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II. LDEQ SHOULD DENY CERTIFICATION BECAUSE SOUTHERN AGGREGATES' PROPOSED PROJECT WOULD DAMAGE THE ENVIRONMENT AND DEGRADE THE SOCIAL AND ECONOMIC WELLBEING OF THE LOCAL COMMUNITY.

a. LDEQ, as Public Trustee, Has A Constitutional Duty To Analyze The Environmental Impacts Of Southern Aggregates' Proposed Operation.

Federal review does not relieve LDEQ of its independent duty, under the Clean Water Act and as public trustee, to examine the environmental impacts of Southern Aggregates' proposed project. Under the certification process, the state has independent authority to ensure the integrity of its water quality and to protect its wetlands. *See Keating v. Federal Energy Regulatory Comm'n.*, 927 F.2d 616, 622 (D.C. Cir. 1991) ("Through this requirement, Congress intended that the states would retain the power to block, for environmental reasons, local water projects that might otherwise win federal approval.") "The states remain, under the Clean Water Act, the 'prime bulwark in the effort to abate water pollution,' *see United States v. Puerto Rico*, 721 F.2d 832, 838 (1st Cir.1983), and Congress expressly empowered them to impose and enforce water quality standards that are more stringent than those required by federal law." *Keating v. Federal Energy Regulatory Comm'n.*, 927 F.2d 616, 622 (D.C. Cir. 1991); 33 U.S.C. § 1370.

The Louisiana Constitution requires LDEQ, as public trustee, to analyze the environmental impacts of Southern Aggregates' proposed project before deciding whether to grant Southern Aggregates' water quality certification request. LDEQ has a constitutional mandate to protect, conserve and replenish "[t]he natural resources of the state, including . . . water . . . insofar as possible and consistent with the health, safety, and welfare of the people." La. Const. Art. IX § 1. Under *Save Ourselves Inc. v. La. Env'tl. Control Comm'n.*, 452 So.2d 1152, 1157 (La. 1984), the

representative of the public interest may not “act as an umpire passively calling balls and strikes for adversaries appearing before it; the rights of the public must receive active and affirmative protection at the hands of the [agency].” As the “primary public trustee of natural resources and the environment,” LDEQ “must act with diligence, fairness and faithfulness to protect” public interest in Louisiana’s natural resources. *Id.*

Louisiana courts explained this constitutional requirement in the *Save Ourselves* decision and in *In re Rubicon, Inc.*, 95-0108 (La. App. 1 Cir. 2/14/96), 570 So. 2d 475, 481. In *Save Ourselves*, the Louisiana Supreme Court found that Article IX, Section 1 “requires an agency or official, before granting approval of [any] proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare.” *Save Ourselves*, 452 So. 2d at 1157.

The Supreme Court did not limit public trustee duties to permit-issuing responsibilities. Rather, it recognized the Louisiana Constitution places public trustee duties on LDEQ any time it grants approval for any “action affecting the environment.” *Id.* Because a water quality certification is a state-issued approval required prior to filling in wetlands, and filling in wetlands affects the environment, LDEQ must fulfill its public trustee duties before issuing a water quality certification.

b. LDEQ Must Give Full and Careful Consideration to the Costs and Benefits of the Project, Including Environmental, Social and Economic Costs.

The Supreme Court stated that the Article IX, Section 1 analysis “requires a balancing process in which environmental costs and benefits must be given full and careful consideration, along with economic, social and other factors.” *Id.* The court in *Rubicon* further described LDEQ’s public trustee responsibilities by setting out a series of specific inquiries that the public trustee must address in order to satisfy the Constitutional mandate. 670 So. 2d 475. Specifically, LDEQ must address:

Whether: 1) the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible; 2) a cost/benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and 3) there are alternative projects which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.

Id. at 483. LDEQ must answer these questions, in the record, before making any decision as to water quality certification for Southern Aggregates’ proposed gravel mining project.

c. The Costs Outweigh the Social and Economic Benefits of the Project.

This project will come at great cost to the surrounding environment. Southern

Aggregates operation proposes to dredge and fill 12.91 acres of wetlands.¹⁴ Without these wetlands, adjacent landowners will be at greater risk to flooding, and Spillers Creek, Moler Bayou and the Amite River will be at greater risk to pollution. Wetlands improve water quality by trapping sediments, filtering out pollutants and absorbing nutrients that would otherwise result in poor water quality for downstream users.¹⁵ Wetlands also help prevent flooding by trapping and slowly releasing surface water.¹⁶ A one acre wetland can typically store about one million gallons of water, depending on permeability.¹⁷ The run-off from the project will threaten to pollute the Amite River and Spillers Creek, flowing through Spillers Creek and contribute to the Amite River's existing environmental problems. Final 2012 Integrated Report of Water Quality in Louisiana, 2012. As of 2012, Amite River did not support its designated use of fish and wildlife propagation. *Id.* Further, the project's dust, noise and fumes will risk disruption to the local wildlife.

Southern Aggregates' proposed operation will also impose social costs. Considering the operation's noise, dust, and traffic, this project will cost a community of +224 residences eight years of disturbance and hazardous living conditions. Currently, the Oak Hills subdivision is a quiet neighborhood removed from industrial activity. Many residents moved to Oak Hills just for that peace and quiet this neighborhood offers. Several residents moved there for their health. Others moved there for the safety to raise a family or take care of loved ones.

Southern Aggregates' Simms Road plant site demonstrates the social detriment its mining operations will be to the residents of neighboring properties. Since 2012, Southern Aggregates' mining operation has disrupted the life and well-being of Mrs. Lynn Dupre, a property owner living next to the Simms Road plant site. *See generally* Dupre Aff. (attached and incorporated by reference). In 2006, when Mrs. Dupre moved to her property in Denham Springs, she had the same dreams as the Oak Hills residents: to live in peace and quiet, removed from the outside world. *Id.* at ¶ 8. For over five years, Mrs. Dupre had just that. Forested landscape surrounded her property and she lived a tranquil life. *Id.* Around June of 2012, Southern Aggregates' operations changed all of this. *Id.* at ¶ 9. Without notice to Mrs. Dupre, Southern Aggregates' located a generator and gravel washer within 100 feet from Mrs. Dupre's home and built a gravel road within 25 feet from her home. *Id.* at ¶ 10. Mrs. Dupre woke up at 4:30 A.M. every day to the sound of operations: the hum of the generator, the scraping of the gravel washer and the resonating "BEEP," "BEEP," "BEEP" of the large hauling trucks. *Id.* at ¶ 12, 14. As these trucks transported gravel along the gravel road, Mrs. Dupre watched the trucks kick up billowing clouds of dust. *Id.* at ¶ 16. Mrs. Dupre can see the dust everywhere as it covers her property, house and vegetation. *Id.* at ¶ 17. She can feel the grit of the dust when she touches her car and trashcans. *Id.* at ¶ 17. Every time a truck

¹⁴ Letter from Southern Aggregates on Supplement to Needs/Alternatives Analysis/Response to Agency & Public Comments to La. Dep't of Env'tl. Quality 1 (Jan. 30, 2015) [hereinafter *Supplement Letter from Southern Aggregates on Needs/Alternatives Analysis*] (on file with La. Dep't of Env'tl. Quality; AI # 192689; Document ID # 9626805).

¹⁵ *Wetland Importance*, Gulf Restoration Network, <http://healthygulf.org/our-work/wetlands/wetland-importance> (last visited March 1, 2015 1:54 PM).

¹⁶ *Id.*

¹⁷ *Id.*

passes her home, she can feel the vibration, like the vibration of an airplane flying low over her. *Id.* at ¶ 19. Further, after the project began, the flooding started. *Id.* at ¶ 21. The afternoon rain, which once drained naturally, covered her property. *Id.* at ¶ 20-21. From the dust and noise to the flooding and vibrations, Southern Aggregates' operation greatly diminished Mrs. Dupre's enjoyment of living in her home. *Id.* at ¶ 25, 32-33.

Once a haven from the outside world, this project will transform the Oak Hills subdivision to the backyard of mining operation, turning the nightmare described by Mrs. Dupre into the nightmare of an entire community. The dust from the operation, excavation and trucking will fill the air, scattering across the neighboring homes. The operation's noise will sound off for up to seventeen hours every weekday at as much as 85 dBA¹⁸, a noise level equivalent to the noise level of average traffic or a food blender.¹⁹ The American Tinnitus Association Earplugs suggests earmuffs or other protection devices when exposed to sounds above 85 dBA.²⁰ Also, with the entrance to the mining site only 0.3 miles from Oak Hills' entrance, the trucks will flow back and forth across the Oaks Hills entrance as they transport gravel at all hours of the day. By destroying the local wetlands, the project could increase the risk of flooding in the surrounding neighborhoods. Further, when the homeowner's property values plummet, the residents who want to get away from this nightmare will not be able to sell for a reasonable price. They will be trapped in the backyard of a mining operation, at risk to the flooding, pollution and danger that this project would cause.

Even in purely financial terms, the expected benefits of this project are outweighed by the economic loss to the community. If operations begin, local properties value will plummet. Neighboring landowners could see their property values fall by as much as 39%.²¹ The creation of a pit or quarry creates apprehension in the general public, which makes the property less desirable and thus diminishes the prices of neighboring property.²² Continuing scientific uncertainty over the adverse health consequences of a neighboring pit or quarry only serves to perpetuate the debilitating effect of pits or quarries on property prices.²³ Livingston Parish would lose the property tax revenues from reduced property values. If the three subdivisions located near the proposed site sustained a 20% decrease in value, the Livingston Parish Tax Assessor estimated \$350,023 loss in property taxes per year just on these 3 subdivisions.²⁴ Over eight years, the

¹⁸ Between 6 a.m. and 11 p.m. on weekdays, the maximum allowable noise level is 85 dBA. Letter from Southern Aggregates on Needs/Alternatives Analysis/Response to Agency & Public Comments to La. Dep't of Env'tl. Quality 14 (Nov. 7, 2014) [hereinafter *Letter from Southern Aggregates on Needs/Alternatives Analysis*] (on file with La. Dep't of Env'tl. Quality; AI # 192689; Document ID # 9531737).

¹⁹ *It's a Noisy World We Live In*, American Tinnitus Association (March 1, 2015, 2:34 PM), <http://www.ata.org/for-patients/how-loud-too-loud>.

²⁰ *Id.*

²¹ Ben Lansink, Diminution in Price (if any) to Residential Real Estate if Located in the Vicinity of an Existing or Proposed Ontario Pit or Quarry 3 (2014).

²² *Id.* at 5.

²³ *Id.*

²⁴ Jeff Taylor, Tax Impact of 20% Decrease in Value for Easterly Lakes/Lakes at BelleTerre/Oak Hills (2014).

estimated length of the proposed project, at this decreased value, the Parish would lose \$2,800,184 in real estate taxes.

Economic benefits to Livingston Parish from the operation's aggregate sales would be minimal as Southern Aggregates mainly supplies Baton Rouge and Lafayette, locations outside of Livingston Parish.²⁵ The tax gains from those sales may accrue to other parts of the State and not to Livingston Parish or the local community. Further, there has been no credible demonstration of need. Southern Aggregates is just one of a host of mining companies serving Baton Rouge/Lafayette developments. Southern Aggregates alone has six operations in the state with four located along the Amite and is currently applying for two more. *See Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 5. Their own website notes that they have extensive reserves lasting over 27 years at current production rates.²⁶ Finally, Southern Aggregates' claimed economic benefit of employment or tax revenues could be maintained by choosing an alternative site. *See Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 24.

d. Southern Aggregates Has Not Avoided the Potential and Real Adverse Environmental Effects to the Maximum Extent Possible.

First, Southern Aggregates' proposed mitigation will not avoid the adverse environmental effects to the dredged wetlands and surrounding area. *See generally Rubicon*, 670 So. 2d at 483. Southern Aggregates currently has planned a mitigation bank off-site, but this will not avoid the real adverse consequences of the loss of the 12.91 wetlands. Without these wetlands, adjacent landowners will be at greater risk to flooding and Spillers Creek and the Amite River will be at greater risk to pollution from run-off and flooding.²⁷ Southern Aggregates must conduct on-site mitigation as part of avoiding adverse environmental effects to the maximum extent possible.

Second, Southern Aggregates proposed setback will not avoid the real adverse environmental effects to the maximum extent possible. With a 100 foot distance between her house and the operation, Mrs. Dupre woke up every morning from the operation and lived on a dust covered property. *See generally Dupre Aff.* Her experiences indicate that 125 foot setback proposed by Southern Aggregates will be insufficient to avoid the noise and dust problems caused by the operation. *Id.* At 125 feet, Southern Aggregates operations will disrupt the waterways, wildlife and neighboring landowners. Southern Aggregates needs at least a 200 foot setback from adjacent properties to minimize their adverse effect on the surrounding environment.

Third, Southern Aggregates must establish Best Management Practices as recommended by LDEQ. Southern Aggregates must construct a vegetative buffer zone 100 feet from Spillers Creek with a silt fence adjacent to the stream. This buffer zone will aid in

²⁵ VantaCore, <http://vantacore.com/> (last visited March 1, 2015).

²⁶ VantaCore, <http://vantacore.com/> (last visited March 1, 2015).

²⁷ *Wetland Importance*, Gulf Restoration Network, <http://healthygulf.org/our-work/wetlands/wetland-importance> (last visited March 1, 2015 1:54 PM). (Wetlands are a natural source of pollution filtration and rainwater storage.).

sediment filtration and removal by slowing surface water flow through these areas. Recommended Best Management Practices: Nonpoint Source Pollution Sand & Gravel Mining Industry, Louisiana Department of Environmental Quality 12 (2007).²⁸ Southern Aggregates must use sod stabilization and permanent seeding to reduce erosion caused by the operation. *Id.* Southern Aggregates must also construct an aggregate stabilized entrance which is at least six inches thick and fifty feet long. This, along with tire washing, will help reduce mining trucks from tracking sediment onto public roads. *Id.* at 15.

e. There Are Alternative Projects Which Would Offer More Protection to the Environment Than the Proposed Project Without Unduly Curtailing Non-Environmental Benefits.

Sand and gravel is not unique to this property and the number of Southern Aggregates' own mining operations in the area indicate that alternative sites are widely available within miles of this proposed location. Just 3 miles north of Southern Aggregates' proposed site, aggregate mining is predominate. Since 2009, Southern Aggregates alone has started four mining operations along the Amite River and is applying for a fifth gravel mine permit for Plant 12 in addition to this proposed operation, Plant 10.²⁹

Southern Aggregates has many alternatives to the proposed project. It could expand operations at one or multiple sites to meet its desired production. According to the website of VantaCore, Southern Aggregates' parent company, Southern Aggregates has "extensive reserves which will last over 27 years at the current production rates."³⁰ Southern Aggregates could pull from these reserves by expanding operations at one or several of their six gravel mine operations in Louisiana thereby minimizing and possibly eliminating any further wetlands loss. *See Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 5. Four active operations are within five miles of the proposed site, making this alternative practicable without duly curtailing Southern Aggregates' non-environmental benefits, i.e., cost of expansion and distribution. Southern Aggregates' proposed fifth gravel mine, Plant 12 Adams, is located in Helena Parish far removed from residential developments. Plant 12 could serve as an alternative to Plant 10's operations. In addition, Southern Aggregates has the option of locating a new mine in an area that does not require destruction of wetlands—there is no credible argument that sand and gravel only exist in areas that currently qualify as wetlands and no credible argument that sand and gravel is only available adjacent to subdivisions.

To satisfy its public trustee duties, LDEQ needs to conduct its own independent analysis of these and other possible alternatives. Southern Aggregates' alternatives analysis is insufficient for LDEQ's Public Trustee Analysis since all nine proposed alternatives are not adequate alternatives regardless of environmental impacts. *See Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 26-40. Under Southern Aggregates' method of alternatives

²⁸ Available at

<http://dnr.louisiana.gov/assets/docs/conservation/injectionmining/LouisianaRecommendedBMPs.pdf>.

²⁹ *See Letter from Southern Aggregates in Re: Request for Initial Minor Source Air Permit for Plant 12 Adams to La. Dep't of Env'tl. Quality* (Oct. 16, 2014) (on file with La. Dep't of Env'tl. Quality; AI # 194054; Document ID # 9505348).

³⁰ VantaCore, <http://vantacore.com/> (last visited March 1, 2015).

analysis, an applicant could list any property as an alternative but claim the property is inadequate for being too small or having insufficient resources.³¹ *See Id.* Southern Aggregates included one property on the alternatives list without even conducting any exploratory tests on the property and therefore does not know what resources could be in the property.³² *See Id.* Further, Southern Aggregates limited its analysis to alternatives along the Amite River.³³ Arbitrary geographic limitations invalidate an alternatives analysis under Matter of Browning-Ferris Indus. Petit Bois Landfill, 93-2050 (La. App. 1 Cir. 6/23/95), 657 So. 2d 633, 639.

f. LDEQ's Statement of Basis Must Contain a Cost/Benefit Analysis, an Analysis of Alternative Projects, and an Analysis of If/How Southern Aggregates Has Avoided Adverse Environmental Effects to the Maximum Extent Possible.

In developing the Public Trustee Analysis, LDEQ must “make basic findings supported by evidence and ultimate findings which flow rationally from the basic findings; and it must articulate a rational connection between the facts found and the order issued.” *Save Ourselves, Inc. v. Louisiana Env'tl. Control Comm'n*, 452 So. 2d 1152, 1159-60 (La. 1984). This means that LDEQ must, in its Statement of Basis, discuss the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible. The Statement of Basis must also contain a real cost/benefit analysis—supported by evidence—of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former. Finally, the Statement of Basis must discuss whether there are alternative projects—such as locating the mining operation farther north along the Amite River—which would offer more protection to the environment than the proposed project without unduly curtailing non- environmental benefits to the extent applicable.

In this case, LDEQ has not conducted a Public Trustee Analysis with respect to Southern Aggregates' project nor examined the potential and real adverse environmental effects. Further, LDEQ has not conducted a costs/benefit analysis of the proposed project, nor has it conducted an

³¹ Powers 3, Redstick, Bishop and Haden Properties are not valid alternatives on their face since neither property meets Southern Aggregates' minimum size criterion to begin with. *Letter from Southern Aggregates on Needs/Alternatives Analysis*, supra, at 33-34, 37. The Westerhaeuser Properties, Area 1, Area 2 and Area 3 are not a valid alternatives as Southern Aggregates' investigation showed that there are no gravel reserves. *Id.* at 35-36. The Robertson Property is 116.46 acres, 11.46-26.36 acres more than Southern Aggregates' suggested minimum, but contains a pipeline reducing the mineable area and serving as a serious impediment. *Id.* at 26, 36.

³² The Burrell Carter Property is a possible alternative, but Southern Aggregates says the owner will not allow them to conduct any geotechnical investigation on the property and therefore does not know what resources could be in the property. *Id.* at 31-33. Further, Southern Aggregates does not mention how many acres of wetlands would be affected by their operations, so LDEQ would not know what environmental effects this alternative could have. *Id.*

³³ The study found that 56 rivers with in-corridor mining amounting to 251 sites and covering 69,675.6 acres. Joann Mossa and David Coley, *River Corridor Sand and Gravel Mining, Louisiana and Mississippi: A Database and Comparison of Different Data Sources*, 1, 17 (2006), http://minerals.usgs.gov/mrerp/reports/Mossa-04HQGR0178/Mossa_Report1-04HQGR0178.pdf.

adequate alternatives analysis. Before LDEQ could lawfully grant Southern Aggregates' request for water quality certification, LDEQ must prepare a Public Trustee Analysis in order to fulfill its public trustee duties. *See, e.g.,* Judgment, *O'Reilly et al. v. LDEQ*, No. 509564 (La. 19th JDC, Mar. 5, 2004) (vacating and remanding an LDEQ water quality certification "to prepare an environmental analysis in compliance with the La. Const. Art. IX § 1, as explained by *Save Ourselves, Inc. v. La. Env'tl. Control Comm'n*, 452 So. 2d 1152 (La. 1984) and its progeny.").

Public Trustee Analysis documentation in this matter should respond fully to (but not be limited to) the following reasonable concerns raised by residents at the public hearing:

- What effect will the operation have on the structural integrity of nearby residences?
- What concentrations of PM_{2.5} and other particulates will residents experience because of the operation?
- What, precisely, will the increase in noise levels be, measured in decibels?
- What is the projected increase in traffic and what (quantitatively) will be the impact in terms of commute times and traffic injuries and fatalities?
- What are LDEQ's conclusions with respect to expected decreases in property values in the Oak Hills subdivision?
- Will dewatering of the mine cause subsidence of soils under these residences?
- What effects will the operation have on drainage and flooding, for example from diverting flow and from elimination of wetlands?
- What constituents will dust and particulate matter from the operation contain?
- What will be the impact on wildlife?
- Are there any registered or unregistered private drinking water wells within 100 feet of the perimeter of the mining operation?³⁴
- Are there any public supply wells within 1,000 feet from the water well?³⁵

h. We Request an Opportunity to Comment on LDEQ's Public Trustee Analysis.

Under Louisiana's due process protection, LDEQ must give the public an opportunity to comment on LDEQ's Public Trustee Analysis. *See* Judgment, *La. Env'tl. Action Network v. Fleet*, No. 445019 (La. 19th JDC, July 10, 2000) (vacating and remanding an order issued by the Office of Conservation of the Department of Natural Resources where LDNR's failure to issue the Public Trustee Analysis "violated the spirit of the due process requirement."). The fundamental requirement of procedural due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *Hamilton v. Royal Int'l Petroleum Corp.*, 2005-846 (La. 2/22/06), 934 So. 2d 25, 32 (internal citations omitted).

Once LDEQ conducts a Public Trustee Analysis, Save Our Hills and Louisiana Environmental Action Network request an opportunity to comment on the Public Trustee Analysis.

³⁴ *See* Recommended Best Management Practices: Nonpoint Source Pollution Sand & Gravel Mining Industry, Louisiana Department of Environmental Quality 18 (2007), available at <http://dnr.louisiana.gov/assets/docs/conservation/injectionmining/LouisianaRecommendedBMPs.pdf>

³⁵ *See Id.*

Such comments provide LDEQ with more information with which to conduct a complete and meaningful review of Southern Aggregates' application. Please provide written notice of that review period to affected members of the public and their representatives, including without limitation:

Jim Norred
9900 Meadow Lane
Denham Springs, LA 70706
jimnorred@gmail.com

Adam Babich
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
ababich@tulane.edu

III. LDEQ MUST CONDITION ANY WATER QUALITY CERTIFICATION TO INCLUDE MONITORING WATER QUALITY OF THE AMITE RIVER AND SPILLERS CREEK, COMPLIANCE WITH LOCAL ORDINANCES, COMPLIANCE WITH BEST MANAGEMENT PRACTICES AND FULL COMPLIANCE WITH THE § 404 PERMIT.

If LDEQ issues a water quality certification, LDEQ must condition this Water Quality Certification to include compliance with local ordinances and monitoring water quality of the Amite River and Spillers Creek as these conditions are "necessary to ensure compliance with state Water Quality Standards... [and] applicable state water laws, rules, or regulations. La. Admin. Code. tit. 33, § 1507.F.3.b. Livingston Parish Ordinance No. 14-45 ("Ordinance") requires that Southern Aggregates' obtain a "Sand/Gravel/Burrow Pit/Aggregate Permit" from the Parish Permitting Office. Livingston Parish, La., Code of Ordinances § 14-45 (2014). At a minimum, Southern Aggregates should condition certification on the following:

- Southern Aggregates WQC 140708-02 will comply with Livingston Parish Ordinance No. 14-45, including, but not limited to, the 125 foot setback and 12 foot berm. Prior to certification, Southern Aggregates must submit to LDEQ updated maps/drawings including these specifications.
- Southern Aggregates WQC 140708-02 will use on-site mitigation of wetlands, including, but not limited to, restoration of wetlands on the property site.
- Southern Aggregates WQC 140708-02 will monitor groundwater, air, storm water, and noise and make any reports associated with such monitoring available to LDEQ and the public.
 - Monitoring of air – Prior to commencing any dredging operations, provide a work plan satisfactory to LDEQ for the monitoring of particulate matter (PM_{2.5}) on and near the site that identifies the sampling methods to be applied, the type of analysis to be conducted and the frequency of sampling and analysis. Additionally, excavation may not commence until initial air samples have been analyzed to provide a baseline and the results provided to LDEQ.

- Monitoring of storm water - Prior to commencing any dredging operations, provide a work plan satisfactory to LDEQ for the construction of an onsite rainwater holding pond and associated drainage ditches and dikes; and include a monitoring plan for storm water that identifies the sampling methods to be applied, the type of analysis to be conducted (including without limitation analysis of levels of pH, chlorides, sulfates, total dissolved solids and dissolved oxygen) and the frequency of sampling and analysis. Additionally, excavation may not commence until the rainwater holding pond and associated ditches and dikes have been installed.
- Monitoring of groundwater – Prior to commencing any dredging operations, provide a work plan satisfactory to LDEQ that provides for the installation onsite of at least one ground water monitoring well, a monitoring plan that identifies the sampling methods to be applied, the type of analysis to be conducted (including without limitation analysis of levels of pH, chlorides, sulfates, total dissolved solids and dissolved oxygen) and the frequency of sampling and analysis. Additionally, excavation may not commence until initial samples from all wells have been analyzed and the results provided to LDEQ.
- Monitoring of noise – Prior to commencing any dredging operations, provide a work plan satisfactory to LDEQ for the methods of monitoring for noise, the standards to be applied for limits on noise and frequency monitoring. Additionally, excavation may not commence until a background noise level has been established through such monitoring method.
- Southern Aggregates will use the following Best Management Practices, including, but not limited to:
 - A vegetative buffer zone 100 feet from Spillers Creek with a silt fence adjacent to the stream.
 - Sod stabilization and permanent seeding to reduce erosion caused by the operation.
 - An aggregate stabilized entrance which is at least six inches thick and fifty feet long.
 - Tire washing at the site entrance.

If Southern Aggregates fails to comply with these or any other conditions, LDEQ should revoke Southern Aggregates' certification. La. Admin. Code. tit. 33, § 1507.H.1. (“Any certification issued pursuant to this regulation is subject to revocation or modification for violation of any guideline, criterion, or condition under which the certification was approved.”)

CONCLUSION

For all of the forgoing reasons, Save Our Hills, LEAN and Oneil Couvillion urge LDEQ to DENY Southern Aggregates' application for a Water Quality Certification.

Save Our Hills, Louisiana Environmental Action Network, and Mr. Oneil Couvillion
Southern Aggregates Water Quality Certification Comments
April 21, 2015
Page 16 of 17

We request notification of approvals/denials/changes to Southern Aggregates' certification request and look forward to a written response to the concerns outlined in this document. Please provide copies of those documents to, at minimum:

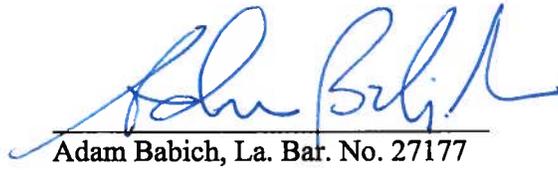
Jim Norred
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Respectfully submitted by:



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Fax (504) 862-8721
As Counsel for Oneil Couvillion



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Email: ababich@tulane.edu
*Counsel for Save Our Hills, Louisiana
Environmental Action Network, and Mr.
Oneil Couvillion and as supervising
attorney for Taylor Doyle's
representation of Oneil Couvillion*

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

Undersigned counsel respectfully introduces student attorney Taylor Doyle to this forum pursuant to Rule XX. As the student attorney's supervising attorney, I approve of the student attorney's appearance in this case. Written consent of the applicable client to an appearance by a student attorney in this matter is submitted with these comments.

Respectfully submitted this April 21, 2015,



Adam Babich, La. Bar. No. 27177
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
Telephone (504) 862-8800
Fax (504) 862-8721
Email: ababich@tulane.edu

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: MARCH 19, 2010


Mr. Oneil Couvillion

AFFIDAVIT OF LYNN DUPRE

STATE OF LOUISIANA

PARISH OF LIVINGSTON

BEFORE ME, the undersigned authority, personally came and appeared, Lynn Dupre who, after being duly sworn, did depose and say:

Personal Background

1. My name is Marta Lynn Dupre, formerly Wilhoit. I go by “Lynn.” I am more than eighteen (18) years old, married, and am competent to make this declaration. All matters in this declaration are based on my personal knowledge.
2. I am a resident of Denham Springs, Louisiana in Livingston Parish, a town bordering on the east side of the Amite River. This has been my residence for 8 years.
3. I used to help manage a construction company with my former husband. I am familiar with construction operations.

My Property Prior to Southern Aggregates’ Operations

4. My address is 38131 Nan Wesley, Denham Springs LA 70706. I moved here in November, 2006. I live here with my husband, Kerry Dupre. The property is approximately an acre and a half.
5. The area surrounding our property consists mostly of small properties (1-3 acres) and wooded areas. There is an open field to the south and a wooded area to the north. The property to the west was pasture land. I do not know the owners of the property to the west, but when I bought my property, the seller told me that the property to the west was used for cattle and had a servitude on it by DEMCO, Dixie Electric Membership Corporation, an energy company.
6. From conversations with neighbors, my understanding is that a lot of people in the area are retired.
7. I have been retired since 2013. I am on my property almost all day most days except to go to the store or run the occasional errand. I would estimate I spend 20-24 hours of the day on my property every day.
8. I moved to the property for the peace and quiet the area had to offer. The property seemed very quiet and very dark when I first moved in.

Southern Aggregates' Operations Begin

9. Southern Aggregates, LLC leases and operates an aggregate mining operation on the property to the west of my property.

10. I noticed their operation in May/June of 2012. At first I thought DEMCO was working on the property. I started noticing noise 24 hours per day and it sounded like a generator. It turned out to be a generator. I watched them put together a large machine about 100 feet from our property line. I later found out that this was a gravel washer. I watched them build a gravel and sand road. This road is about 25 feet from the property line and is on the east side of the washer.

11. Southern Aggregates never notified me that they were locating a gravel pit next my house.

The Gravel Washer and Generator

12. Beginning in about June 2012, I noticed Southern Aggregates operating the generator and gravel washer starting at 4:30 A.M. every day. This would wake me up every day. I would wake up and tell my husband, "Here they go again."

13. In early 2013, the noise from Southern Aggregates' generator and gravel washer was so bad that I had trouble getting to sleep at night. My husband contacted Southern Aggregates to turn off the generator in the afternoons. After that, the noise from the generator ended at 6/6:30 P.M. and would start again at 6 A.M.

14. Although the noise from the generator didn't start until 6 A.M. now, I could still hear noise from Southern Aggregates' operation at 4:30 A.M. It sounded like trucks and we could hear a loud "BEEP! BEEP! BEEP!" when they were operating. We came to find out that Southern Aggregates employees were loading up trucks at that time and this was the sound of the trucks reversing.

The Trucks

15. I am concerned about the big industrial trucks that are part of Southern Aggregates' operation adjacent to my home. They come up and down the road and pick up gravel from the gravel washer. They look like giant dump trucks.

16. The dust looks like it comes from the large trucks. When they are driving along the gravel road next to my property, I can see it billowing through the air.

17. I can see the dust everywhere. I can see it on my car even though my car is under the car port. I can see it on the porch, garbage cans and vegetation. I can shake the limbs of trees and dust flies everywhere. In the summertime, when there isn't a lot of rain, the amount of dust looks considerably worse to me. It's so gritty, I can feel it. I'm aware that rural areas are dusty but not like that.

18. I had never seen a water truck to help with the dust until after July 2014; after Southern Aggregates proposed the operation next to Oak Hills. I recognized the water trucks because I can see a hopper on the truck and watch them spray water 2-3 feet off the ground. This seemed to make a difference in how much dust the trucks kicked up, but within 10 minutes I could see the trucks kicking up dust again. I think the water dried up that quickly.

19. I can also feel a vibration. I think it's coming from the trucks. It's a shaking; it feels like the vibration of when an airplane is flying low over you. There are ceiling vents in my house that have come loose since the project began. I think it's caused by this vibration.

Flooding

20. We did not have a flooding problem prior to Southern Aggregates' operation. There is a swell ditch near the property and the rainwater would drain from the west to the south, which seemed to me to prevent flooding in the neighborhood. From conversations with my neighbors, my understanding is that none of the neighbors had problems with flooding prior to the Southern Aggregates' operation.

21. After Southern Aggregates built the road, my husband and I started having more flooding problems. After a rain event, the area would flood and we would have standing water all over the yard and up to the carport.

22. My husband called Southern Aggregates to tell them about the problem. The Southern Aggregates representative told my husband that they recognized that they had a problem. They came to my property and dug a trench and put a pipe in it to get the water to drain. We no longer have a flooding problem.

Lack of Berm

23. There is no berm between my property and Southern Aggregates' operation.

Concerns for Oak Hills Subdivision

24. In July 2014, I heard about Southern Aggregates' new operation next to Oak Hills Subdivision. I contacted my Parish Councilman, Jim Norred, because I wanted to show him what it was like living next to a Southern Aggregates' mining operation.

25. Jim Norred brought a group of people to my property to check out the operation. We walked over to the area site and watched the trucks go up and down the road. By the time the group was leaving the property, I could see that dust covered their shoes.

26. About this time, Southern Aggregates moved their washer to another part of the property.

27. My main concern for Oak Hills is the noise. This operation generates a lot of noise. From my experiences, I believe that the noise will be bad.

28. I am also concerned about the danger this operation presents to the children of Oak Hills. These operations are wide open and a child could fall into the pit. The edge of the pit

next to my house goes straight down, and if a child fell into the pit, it would be very hard to save the child before he or she drowned.

29. I am also concerned about the operation attracting trespassers. I have seen the front gate and it looks like a car could drive around the fence blocking the operation's entrance. In fact, around 3 P.M. one day, I heard shooting coming from the operation site. I saw a man and a woman shooting rifles on the property. They were not dressed like people working on the operation.

30. From my experience, I believe the dust could also be bad. Southern Aggregates says that they use a wet process for their gravel washers, but from my experience, I believe that it is the trucks that cause much of the dust. I do not know to what degree a berm might help with this problem.

31. I am also concerned about the property values of Oak Hills' residences. Who knows if someone would be willing to buy a home next to an operation like the one next to my home.

Closing Remarks

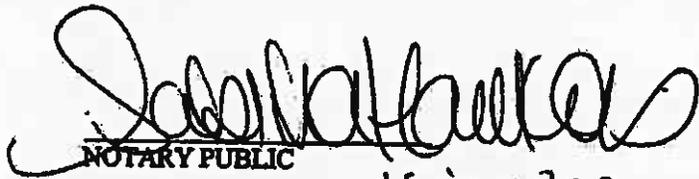
32. Living adjacent to Southern Aggregates' operation has greatly diminished my enjoyment of living in my home and in my neighborhood. In particular, the noise and dust from the operation disturb and concern me.

33. I am concerned that Oak Hills will have to go through what I had to go through and am still going through. I had not spoken up sooner because I am just one person and did not think that I could have an effect on Southern Aggregates' operation next to my home. I hope that these remarks will have an effect on Southern Aggregates' site choices and consideration of their neighbors.

34. I am also concerned that Southern Aggregates will lease another property near my property. I have heard rumors that this might be happening, but I have no idea if that is true. I have not received any notification from Southern Aggregates about a proposed operation, but I also do not expect to receive notification at this point, since Southern Aggregates did not notify me of their past operation.

Marta 
LYNN DUPRE
Address: 38131 Nan Wesley Rd. JS LA 70106

SWORN TO AND ASCRIBED BEFORE ME, THIS DAY OF 28th March 2015.



NOTARY PUBLIC

State of Louisiana, Parish of Livingston

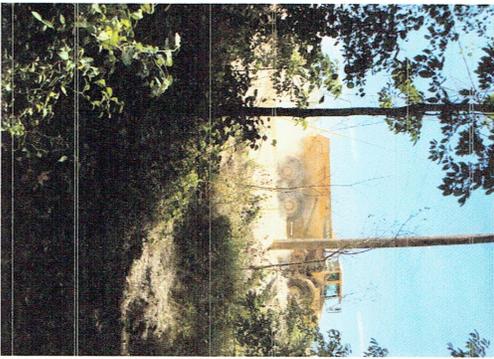
My Commission Expires 1/1/2010



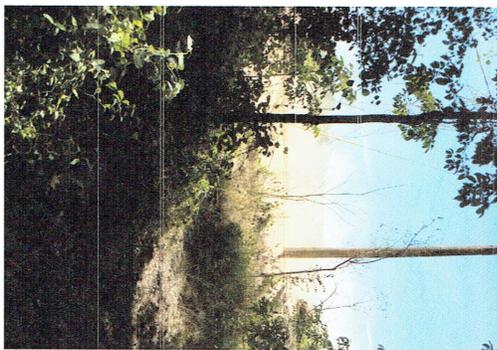
Photographs

1. Dumper Excavation Truck
2. Dust cloud caused by Dumper Excavation Truck
3. Property adjacent to Dupre property, no fencing, no berm, dangerous for children to be around. Sheer drop-offs.
4. Lake formed by excavation, no clue as to depth.
5. View looking North
6. Fence that principals from Southern Aggregates refer to. Placed on property approximately 20-30 years ago, barbed wire and only partially standing and is not a true representation of the property line.
7. Standing on the pit property adjacent looking at the Dupre home.
8. Someone whether with permission or not shooting a rifle in the pit area. There are homes in the southerly direction where he is shooting.

1



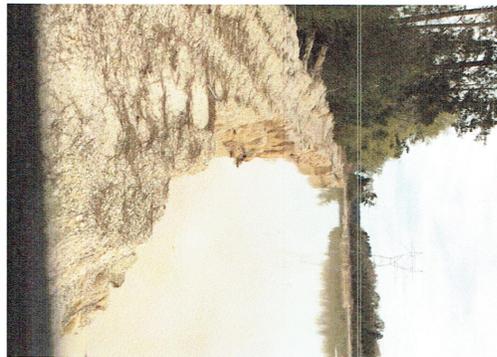
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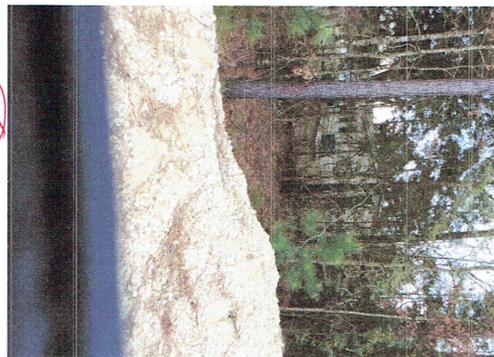
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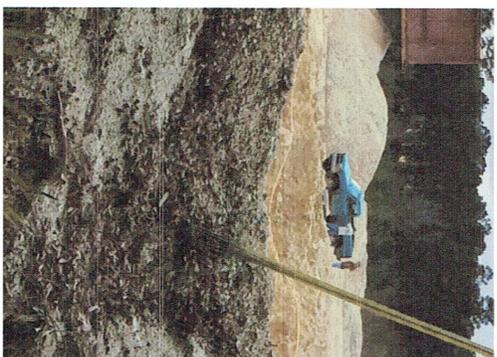
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NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
CIVIL DIVISION "I"

PC
JUL 10 2000
[Signature]

LOUISIANA ENVIRONMENTAL ACTION NETWORK, ET AL

VS. NO. 445,019

WARREN A. FLEET, ETC.

ORAL REASONS FOR JUDGMENT

MONDAY, JULY 10, 2000

THE HONORABLE R. MICHAEL CALDWELL, JUDGE PRESIDING

APPEARANCES:	ON BEHALF OF:
ELIZABETH TEEL; MARK RENKEN	PLAINTIFF
ROBERT PREJEAN	TERREBONNE PARISH, ETC.
WARREN BYRD	GROWTH RESOURCES
JOSEPH WILSON	COMM. OF CONSERVATION

REPORTED AND TRANSCRIBED BY:

FRANCES SPRUILL, CCR

**CERTIFIED
TRUE COPY**

JUL 13 2010

BY *Mallory W. Williams*
DEPUTY CLERK

FILED

JUL 11 2000

Frances Spruill
Deputy Clerk

REC'D C.P.

JUL 12 2000

MONDAY, JULY 10, 2000

THE COURT: OKAY. THIS IS SUIT NUMBER 445,019, LOUISIANA ENVIRONMENTAL ACTION NETWORK, ET AL, VERSUS WARREN A. FLEET, ET AL, BEFORE THE COURT ON A JUDICIAL REVIEW OF AN ORDER ISSUED BY THE OFFICE OF CONSERVATION OF THE DEPARTMENT OF NATURAL RESOURCES.

FIRST, LET ME SAY THAT MY AFFINITY FOR BASEBALL MUST HAVE BECOME WIDELY KNOWN THROUGHOUT THE BAR BECAUSE OF THE BASEBALL REFERENCES THAT GET THROWN INTO ORAL ARGUMENTS ALL THE TIME.

I HAVE REVIEWED ALL OF THE BRIEFS AND MEMORANDA THAT WERE FILED, AND I THINK THERE ARE TWO CRUCIAL ISSUES IN THIS CASE.

THE FIRST IS THE DUE PROCESS ARGUMENT, AND THE FACT THAT THE I.T. RESPONSE WAS NOT PART OF THE APPLICATION THAT WAS FILED, AND NOTICE OF ITS SUPPLEMENTATION OF THE APPLICATION BY THE FILING OF THE I.T. RESPONSE WAS NOT GIVEN TO THE PUBLIC OR MADE AVAILABLE TO THE PUBLIC IN TERREBONNE PARISH. WHILE THAT MAY NOT BE A TECHNICAL VIOLATION OF THE STATUTE, I FIND THAT IT VIOLATES THE SPIRIT OF THE DUE PROCESS REQUIREMENT IN THIS CASE.

SECONDLY, AND MORE IMPORTANTLY, I DO NOT FIND THAT THE ORDER ISSUED BY THE COMMISSIONER COMPLIES WITH THE REQUIREMENTS AS SET FORTH IN THE RUBICON CASE BY THE 1ST CIRCUIT IN 1996. THERE THE COURT NOTED THAT IT WAS THE RESPONSIBILITY OF THE REGULATORY DEPARTMENT TO MAKE BASIC FINDINGS SUPPORTED BY EVIDENCE AND ULTIMATE FINDINGS WHICH FLOW RATIONALLY FROM BASIC FINDINGS, AND MUST ARTICULATE RATIONAL CONNECTION BETWEEN FACTS FOUND

AND THE ORDER ISSUED, AND THAT ONLY BY DETAILING ITS REASONING DOES THE DEPARTMENT UPHOLD ITS POSITION AS A PUBLIC TRUSTEE AND JUSTIFY THE DISCRETION WITH WHICH IT IS ENTRUSTED BY THE CONSTITUTIONAL AND STATUTORY AUTHORITY IN A CONTESTED ENVIRONMENTAL MANNER.

AND I FEEL CERTAIN THAT THIS IS A STATE OF THE ART FACILITY. AND I FEEL FAIRLY CERTAIN THAT ONCE THIS MATTER IS REMANDED AND IT GOES THROUGH THE PROCESS, THE OFFICE IS GOING TO ARRIVE AT THE SAME CONCLUSION. BUT THE FACT IS THAT THIS ORDER ISSUED BY THE COMMISSIONER DOES NOT, IN THIS COURT'S OPINION, COMPLY WITH THE REQUIREMENTS OF THE RUBICON CASE. IT GIVES A VERY BOILERPLATE, SIMPLE REFERENCE; IT DOES NOT IN ANY WAY ARTICULATE FOR THE PUBLIC, AS EXPRESSED BY MR. PREJEAN, ANYTHING TO ALLAY ITS FEARS. IT DOES NOT ARTICULATE, TO THIS COURT, DETAILED REASONING WHICH JUSTIFIES THE DISCRETION GIVEN TO THE DEPARTMENT IN THE ISSUANCE OF THIS ORDER.

AND FOR THOSE REASONS, I AM GOING TO VACATE THE ORDER AND REMAND THIS MATTER TO THE DEPARTMENT OF NATURAL RESOURCES, OFFICE OF CONSERVATION.

CERTIFICATE

I, FRANCES SPRUILL, OFFICIAL COURT REPORTER,
NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON
ROUGE, STATE OF LOUISIANA, DO HEREBY CERTIFY THAT THE
FOREGOING PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPT OF
THE AFORESAID MATTER AS TAKEN BY ME ON THE STENOTYPE MACHINE,
TO THE BEST OF MY KNOWLEDGE AND ABILITY.

WITNESS MY HAND THIS 11TH DAY OF JULY, 2000.



Frances Spruill

FRANCES SPRUILL, CERT. NO. 87095

