

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CHRISTIAN MINISTERS MISSIONARY
BAPTIST ASSOCIATION OF
PLAQUEMINES PARISH, INC.,
LOUISIANA ENVIRONMENTAL
ACTION NETWORK, SIERRA CLUB,
JOYCE CORNIN, AND VELMA DAVIS,
VERSUS
LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY.

NUMBER 615595, DIV. “25”

PETITION FOR JUDICIAL REVIEW

1. The Christian Ministers Missionary Baptist Association of Plaquemines Parish, the Louisiana Environmental Action Network, the Sierra Club, Ms. Joyce Cornin, and Ms. Velma Davis (“Petitioners”) appeal from a Louisiana Department of Environmental Quality (“LDEQ”) decision, granting RAM Terminals LLC (“RAM Terminals”) a minor source air permit that is one of several permits the company is required to obtain prior to construction of a proposed coal handling terminal along Louisiana Highway 23 near Ironton and Myrtle Grove, Louisiana.

2. Petitioners file this appeal because LDEQ violated the Louisiana Constitution by granting RAM Terminals a permit without complying with its duties as public trustee under the Louisiana Constitution, art. IX, sec. 1. Further, LDEQ’s action creates unacceptable risks to the communities in the vicinity of the proposed facility and poses unacceptable dangers to the planned Myrtle Grove Diversion, which is a freshwater diversion designed to address critical ecological needs of the central Barataria Basin by restoring parts of Louisiana’s disappearing coastal wetlands.

PARTIES

3. The Christian Ministers Missionary Baptist Association of Plaquemines Parish is an incorporated organization of Baptist ministers in Plaquemines Parish. The organization represents the interest of members of the communities the ministers serve in Plaquemines Parish,

including Ironton and Myrtle Grove, Louisiana. The organization is domiciled in Plaquemines Parish.

4. The Louisiana Environmental Action Network (“LEAN”) is a statewide network of member groups and individual members. LEAN works to improve the environment for the benefit of all of the citizens of Louisiana. The organization is domiciled in East Baton Rouge Parish.

5. The Sierra Club works to protect and restore the quality of the natural and human environment. The Sierra Club has headquarters in San Francisco, California and is domiciled there. The Delta Chapter of the Sierra Club represents the interests of the Sierra Club in Louisiana and is domiciled in New Orleans, Louisiana.

6. Ms. Joyce Cornin and Ms. Velma Davis are citizens of Louisiana and residents of the town of Ironton in Plaquemines Parish.

7. Members and constituents of the Christian Ministers Missionary Baptist Association of Plaquemines Parish, LEAN, and Sierra Club are directly affected and damaged by LDEQ’s grant of permit 2240-00421-00 because the proposed coal terminal in Ironton, Louisiana, threatens those members and constituents’ use and enjoyment of natural resources, including air and water, in the vicinity of the proposed facility and also threatens to impair their enjoyment of living in their communities.

8. Ms. Joyce Cornin and Ms. Velma Davis are directly affected and damaged by LDEQ’s grant of permit 2240-00421-00. Both live in homes that are located near the proposed facility and are concerned about the effects of pollution from the facility on their health and welfare.

9. The Petitioners are aggrieved persons who may appeal LDEQ’s decision pursuant to La. Rev. Stat. § 30:2050.21.

10. LDEQ is an agency of the State of Louisiana with the power to sue and be sued.

11. LDEQ took the final action in this matter by granting RAM Terminals permit number 2240-00421-00.

JURISDICTION AND VENUE

12. Jurisdiction and venue are proper in this Court, and Petitioners have a right to bring this action pursuant to La. Rev. Stat. § 30:2050.21, which provides for review of a final administrative agency permit decision: “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...The district court shall grant the petition for review.”

BACKGROUND

13. On May 31, 2012, RAM Terminals applied to LDEQ for an air permit for the proposed RAM Coal Terminal, Myrtle Grove to be located near Myrtle Grove and Ironton, Plaquemines Parish, Louisiana.

14. The towns of Ironton and Myrtle Grove, Plaquemines Parish, Louisiana are downriver from the proposed coal terminal that RAM Terminals plans to construct.

15. LDEQ provided no public notice of its consideration of the RAM Terminals permit application.

16. On July 8, 2012, following expedited review, LDEQ approved permit number 2240-00421-00, granting RAM Terminals an air permit for its proposed coal terminal in Ironton, Plaquemines Parish, Louisiana.

17. LDEQ did not provide written notice of approved permit number 2240-00421-00 to Petitioners.

18. Under the Louisiana Constitution, art. IX, sec. 1: “The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.”

19. The Louisiana Constitution, art. IX, sec. 1 “requires an agency or official, before granting approval of [the] proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with public welfare.” *Save Ourselves, Inc. v. La. Envtl. Control Comm'n*, 452 So.2d 1152, 1157 (La. 1984).

20. To comply with its public trustee duties under the Louisiana Constitution, art. IX, sec. 1, LDEQ must analyze three questions: “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 or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.” *In re Rubicon, Inc.*, 95-0108 (La. App. 1 Cir. 2/14/96); 670 So. 2d 475, 483.

21. RAM Terminals proposes to build its coal terminal in the immediate vicinity of the authorized Louisiana Coastal Area Medium Diversion at Myrtle Grove, a project that both the State of Louisiana and the U.S. government support.

22. On April 30, 2012, the Coastal Protection and Restoration Authority of Louisiana wrote in support of the proposed freshwater diversion to Lanier & Associates Consulting Engineers: “[T]he Myrtle Grove project addresses the most critical ecological needs of the central Barataria Basin, an area where delaying action would result in loss of opportunity to achieve future restoration and much greater restoration costs.”

23. On May 9, 2012, the U.S. Environmental Protection Agency wrote to the U.S. Army Corps of Engineers, expressing its concern over the adverse impacts of the proposed coal facility to the proposed freshwater diversion at Myrtle Grove: “As currently proposed, this project would result in direct adverse impacts to approximately 9.7 acres of jurisdictional wetlands... [W]e are concerned that the currently proposed site and configuration of the coal facility could significantly conflict with the public interest in the Myrtle Grove Diversion.”

24. On May 14, 2012, the U.S. National Oceanic and Atmospheric Association’s National Marine Fisheries Service expressed its concern to the U.S. Army Corps of Engineers over the potential for adverse impacts from the proposed coal facility to the proposed freshwater diversion at Myrtle Grove: “NMFS is concerned the... coal export facility would prevent the implementation of the LCA Myrtle Grove diversion, or result in moving the LCA project to a site that is less effective in restoring wetlands in the central Barataria Basin. If this were to

occur, many thousands of acres of wetlands that may have been maintained by construction and operation of the LCA project could be lost in the future.”

25. LDEQ did not consider the environmental harm posed to the proposed freshwater diversion at Myrtle Grove when it approved permit number 2240-00421-00.

26. LDEQ did not consider the risk of forcing a relocation of the proposed freshwater diversion currently planned for Myrtle Grove when it approved permit number 2240-00421-00.

27. LDEQ did not evaluate alternative sites further away from the proposed freshwater diversion when it approved permit number 2240-00421-00.

28. The area of Plaquemines Parish where RAM Terminals proposes to build a coal terminal is susceptible to flooding.

29. Because RAM Terminals proposes to store coal in open air without coverage, flooding in this area poses risks of offsite contamination and adverse effects to the surrounding environment.

30. LDEQ did not consider the potential for flooding and water contamination at the proposed coal terminal site when it approved permit number 2240-00421-00.

31. LDEQ did not analyze the prospect of mitigating measures, such as full or partial coverage of the coal terminal, when it approved permit number 2240-00421-00.

32. Two existing coal terminals and an oil refinery operate near the RAM Terminals proposed site.

33. LDEQ did not evaluate alternative sites further away from the two other coal terminals and the oil refinery when it approved permit number 2240-00421-00.

34. LDEQ failed to analyze the cumulative impact of the proposed terminal with existing facilities in the vicinity, including the two coal terminals and the oil refinery, when it approved permit number 2240-00421-00.

35. Because RAM Terminals proposes to store coal in open air without coverage, wind and other meteorological events pose risks of offsite contamination and adverse effects due to air pollution.

36. The RAM Terminals air permit application to LDEQ based its air pollution impacts (particulate matter emissions) on meteorological data from a much different location than the proposed coal terminal site.

37. LDEQ did not consider the potential for air pollution in light of site specific data when it approved permit number 2240-00421-00.

38. The RAM Terminals air permit application did not provide LDEQ with a clear description of the daily operations within its proposed coal terminal facility.

39. LDEQ approved the RAM Terminals permit number 2240-00421-00 without considering the specific details of the facility, including the locations of potential sources of air and water pollution.

40. In its approval of RAM Terminals permit for a coal terminal in Ironton, Louisiana, LDEQ did not determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with public welfare.

41. In its approval of RAM Terminals permit for a coal terminal in Ironton, Louisiana, LDEQ did not make a finding that the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible.

42. In its approval of RAM Terminals permit for a coal terminal in Ironton, Louisiana, LDEQ did not make a finding that 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.

43. In its approval of RAM Terminals permit for a coal terminal in Ironton, Louisiana, LDEQ did not make a finding that there are no alternative projects or alternative sites or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.

ASSIGNMENT OF ERRORS

44. The LDEQ decision to grant RAM Terminals permit number 2240-00421-00 is in violation of a constitutional provision.

45. The LDEQ decision to grant RAM Terminals permit number 2240-00421-00 is made upon unlawful procedure.

46. The LDEQ decision to grant RAM Terminals permit number 2240-00421-00 is arbitrary and capricious, and characterized by abuse of discretion.

47. The LDEQ decision to grant RAM Terminals permit number 2240-00421-00 is not supported and sustainable by a preponderance of evidence.

DESIGNATION OF RECORD FOR APPEAL

43. Petitioners designate the entire record compiled by LDEQ prior to the issuance of permit number 2240-00421-00.

PRAYER FOR RELIEF

Upon consideration of the law and facts of this case, Petitioners respectfully request that this Court grant relief as follows:

- A. Vacate LDEQ permit number 2240-00421-00.
- B. Stay the effectiveness of LDEQ permit number 2240-00421-00 pending final resolution of this appeal.
- C. Award such other relief as this Court finds just and equitable.

Respectfully submitted on September 21, 2012


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Please serve:

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19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

CHRISTIAN MINISTERS MISSIONARY
BAPTIST ASSOCIATION OF
PLAQUEMINES PARISH, INC., et al.
VERSUS
LDEQ

NUMBER _____, DIV. “____

ORDER

The Court has received the Petition for Judicial Review appealing the Louisiana Department of Environmental Quality's decision to permit number 2240-00421-00.

The record designated by the Petitioners shall be compiled and forwarded to the Nineteenth Judicial District Court, and the appeal shall be returnable to the 19th Judicial Court in compliance with La. Rev. Stat. § 30:2050.21 on or before the _____ day of _____, 2012.

Additionally, the Court stays the effectiveness of LDEQ's approval of RAM Terminals LLC's permit number 2240-00421-00 that is the subject of this appeal pending final resolution of this appeal.

Baton Rouge, Louisiana, this _____ day of _____, 2012.

DISTRICT JUDGE
NINETEENTH JUDICIAL DISTRICT COURT