

PUBLICATION

Legacy Lawsuit Statutory Amendments Take Effect August 1, 2012

Authors: Adam Zuckerman
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Effective August 1, 2012, Act Nos. 754 and 779 of the 2012 Regular Session of the Louisiana Legislature take effect, altering the procedure for Louisiana "legacy litigation." Legacy litigation refers to hundreds of lawsuits in Louisiana seeking damages allegedly related to environmental harm caused by oil and gas exploration and production activities. Following is an overview of some of the key changes to the procedure for litigating legacy lawsuits.

(1) *Limited Admissions and DNR Involvement Prior to Trial*: A defendant can now admit regulatory liability for all or part of the environmental damage. If limited admissions are timely made, the matter is referred to the DNR, Office of Conservation, to determine an appropriate remediation plan. Defendants and plaintiffs submit their proposals and there is a public hearing, after which the OC creates a plan and submits it to other agencies for comment. Eventually, the OC adopts a final plan, which is admissible at trial, along with the other agencies' comments. Each party that files a limited admission will be responsible for certain costs incurred by the DNR. A minimum \$100,000 deposit is required by an admitting party.

(2) *Ability to Extend Prescription*: A party now has the option to give notice of intent to file a suit, extending the prescriptive period by one year. If the landowner exercises this option, he must be more specific in his petition and identify on a map the location of any alleged environmental damage and include the results of any environmental testing. The idea behind this amendment is to allow landowners more time to investigate before filing suit instead of haphazardly filing suit against every operator that operated within so many miles of the property and alleging every type of pollution imaginable. The shotgun approach inevitably required innocent parties to incur substantial fees to investigate and be dismissed from a lawsuit.

(3) *Preliminary Hearing*: Once suit is filed, defendants are entitled, upon request within 60 days of filing of the petition or an amended petition, to a preliminary hearing to determine whether there is good cause for maintaining the defendant as a party in the litigation. The plaintiff has the initial burden to introduce evidence to support the allegations of environmental damage. A defendant then has the burden to prove the absence of a genuine issue of material fact that it caused or is otherwise responsible for the environmental damage.

(4) *Environmental Management Order ("EMO")*: Upon request of any party, the court will enter an EMO that governs testing protocol and requires parties to exchange all test results within 30 days. The failure to timely exchange results "shall" preclude a party from admitting the results into evidence. The completion of environmental testing under an EMO triggers a 90 day "limited admission" window, discussed above.