

PASTOR HARRY JOSEPH, SR., GENEVIEVE BUTLER,
H.E.L.P., THE GULF COAST RESTORATION NETWORK,
THE ATCHAFALAYA BASINKEEPER, AND BOLD
LOUISIANA

23rd JUDICIAL DISTRICT COURT

v. 38, 163 "E"

PARISH OF ST. JAMES

SECRETARY, LOUISIANA DEPT. OF NATURAL
RESOURCES

STATE OF LOUISIANA

April 30, 2018
FILED

[Signature]
DEPUTY CLERK OF COURT

REASONS FOR JUDGMENT

After public hearings, on April 3, 2017, the Louisiana Department of Natural Resources issued permit number P20160166 to Bayou Bridge Pipeline, LLC. This permit is a Coastal Use Permit allowing for a crude oil transport pipeline to cross 11 parishes throughout Southern Louisiana, including St. James Parish, the Terminus of the proposed pipeline. In addition to allowing construction of a pipeline, the permit allows construction of two (2) pump stations and other necessary ancillary facilities. Once constructed, this pipeline has the potential to impact some of Louisiana's most coveted and ecologically sensitive areas such as the Atchafalaya Basin, as well as other wetlands throughout Louisiana.

This case arises out of a Petition for Judicial Review filed by Harry Joseph, Sr., Genevieve Butler, H.E.L.P., The Gulf Restoration Network, The Atchafalaya Basinkeeper, Bold Louisiana (collectively referred to as "petitioners"), seeking a finding from this court that the Louisiana Department of Natural Resources violated Louisiana Law and the Louisiana Constitution when it granted permit number P20160166. In response, several groups filed separate Petitions for Reconsideration with the Secretary of the Department of Natural Resources pursuant to La. R.S. 49:214.35(B). The Secretary denied the Petitions on April 14, 2017 and May 16, 2017. Those groups have joined together to file the instant Petition for Declaratory Judgment, seeking in essence, to appeal the denial of the Petitions to Reconsider. This matter was brought before this court on January 4, 2018, at which time it was taken under advisement.

Petitioners argue the final application submitted by Bayou Bridge Pipeline on March 3, 2017 is deficient and the Department of Natural Resources' issuance of the permit was contrary to Louisiana law in the following specific respects:

- 1) The Department of Natural Resources violated the Coastal Use Guidelines in granting a Coastal Use Permit for the proposed pipeline project in that it failed to apply all the pertinent guidelines, specifically 711(A) and 719(K).
- 2) The Department of Natural Resources violated its duty as a public trustee under Article IX, §1 of the Louisiana Constitution, in that it did not consider the impacts this pipeline would have on the people of St. James. The permit application does not include an emergency response plan nor does it address potential spills that may occur after construction, once the pipeline is operational. The Department of Natural Resources did not consider the potential pollution, noise and traffic in the St. James community, an area which is largely populated by African Americans.

The law is clear that judicial review of Petitions for Reconsideration of the Secretary's decisions pursuant to the Coastal Resources Management Act, such as in the case at bar as are subject to the provisions of the Administrative Procedure Act. See La. Rev. Stat. Ann. § 49:214.35 (E)(F). In so reviewing, the court is confined to the record. See La. Rev. Stat. Ann. § 49:964(F). Moreover, the court has wide discretion in determining what relief is best suited for the situation presented, but must do so within the confines of the Administrative Procedure Act. To that end, La. Rev. Stat. Ann. § 49:964 states the following in pertinent part:

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety

upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

La. Rev. Stat. Ann. § 49:964 (G).

A review of the record before the court reflects that the Department of Natural Resources did not apply guideline 711(A), relative to commercial and industrial surface alterations, initially on the basis that the more specific guideline, 719(K) would apply. However, on reconsideration, the Department thereafter reasoned that 719(K), relative to "oil, gas and mineral activity" had no application either, thereby eliminating the justification for initially refusing to apply guideline 711(A). Instead, the Department applied a less stringent guideline 705, applicable to linear facilities, thereby eliminating the increased protections which should have been afforded prior to issuing a permit to transport crude oil through the neighborhoods of St. James Parish and coastal areas.

The court notes that when it is appropriate to apply one or more guidelines, the Department is under a duty to do so. The Coastal Use Guidelines state as follows, in pertinent part, "[t]he guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with." LAC 43.I.701(A). Moreover, the Department's failure to apply either or both, 711 and 719(K), without articulating any rational basis for doing so is arbitrary, capricious and in contravention of La. R.S. 49:964(G)(5).

With regard to the Department's failure to apply guideline 711(A), this court sees no rational basis for its failure to apply 711(A), relative to commercial and industrial surface alterations. "Surface alterations" are defined as "those uses and activities which change the surface or usability of a land area or water bottom." LAC 43:I.700. The court concedes that once constructed, use of the pipeline would not result in a surface alteration. However, it cannot be disputed that once constructed, use of the pipeline could conceivably change the usability of the land.

The department's failure to apply guideline 719(K) is more troubling to the court. Guideline 719(K), relative to "Oil, Gas and Other Mineral Activities" is defined in the Coastal Use Guidelines as "those activities which are directly involved in the exploration, production and refining of oil, gas and other minerals". LAC 43:1.700. It cannot be reasonably disputed that the transportation of crude oil is directly involved in the refining of oil. Once crude oil is extracted it has to be transported via pipeline to a refinery, where it is thereafter converted to various refined oil products. As such, at a minimum, guideline 719(K) is applicable and should have been considered in determining whether to grant the permit at issue.

Considering the findings and rulings herein, this court will decline to rule on petitioners' argument that the Department of Natural Resources violated its public trust duty by not requiring an emergency response plan or considering the potential adverse impacts in violation of the Louisiana Constitution.

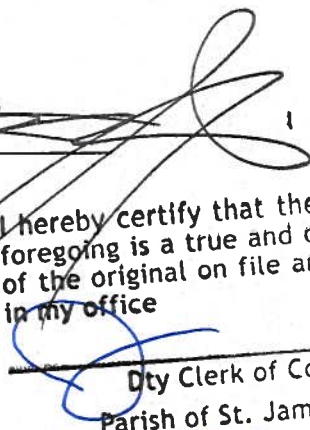
Based on the foregoing, this case is remanded to the Department of Natural Resources for further proceedings in connection with its issuance of permit number P20160166. In that this court finds the permit at issue involves mineral operations, the Department of Natural Resources is ordered to require Bayou Bridge Pipeline, LLC to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster, in accordance with Guideline 719(K), PRIOR to the continued issuance of said permit.

Counsel for Petitioners shall prepare a judgment in conformity with the reasons stated herein.

Thus, done and signed this 27th day of April, 2018 in Gonzales, Louisiana.


Honorable Alvin Turner, Jr.,
Division "E"

I hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office


Dty Clerk of Court
Parish of St. James, LA

Date 5/11/18