

LOTTO

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THE NEW YORK LOTTERY

South Texas College of Law  
Energy Law Institute for Attorneys and Landmen  
September 7-8, 2006

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Plaintiffs - A lawsuit to recover damages and clean up costs associated with big oil screwing up the environment since the 1930's.

Defendants - Residual lawsuit after the royalty payments have become small or have ceased.

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Corbello v. Iowa Production  
i.e., Corbello v. Shell Oil  
i.e., Corbello

Lawsuit filed		May 1992
14 <sup>th</sup> Judicial District Court	(Lake Charles)	May 2000
Court of Appeals, 3 <sup>rd</sup> Circuit	(806 So. 2d 32)	December 2001
Louisiana Supreme Court Round 1	(818 So. 2d 779)	June 2002
Louisiana Supreme Court Round 2	(850 So. 2d 686)	February 2003

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Corbello

**OIL AND GAS MINING LEASE**

An Agreement, entered into this 16<sup>th</sup> day of June, 1929, between  
 Ferdinand Heyd and, wife, Mrs. Heyd



lessor (whether one or more), and Frank W. Bennett, lessee  
 Three Hundred and Twenty Dollars (\$320.00) in hand paid of the  
 L. Lessor, in consideration of the sum of Three Hundred and Twenty Dollars (\$320.00), to have paid of the  
 royalties herein provided and the operations of lessee herein contained, hereby grants, leases and lets exclusively unto lessee  
 for the purpose of testing by any method for formations or structures and prospecting and mining for and producing oil and  
 gas, laying pipe lines, building tanks, storing oil and building power, slatons, telephone lines and other structures (including  
 houses for employees) thereon, to produce, save, take care of, treat and transport said products, the following described land in  
 Calcasieu Parish, Louisiana  
 A certain three hundred and twenty (320) acres of land being the North Half (N1/2) of  
 of Section number thirteen (13) in T-29-N, and R-7-E, in Calcasieu Parish Louisiana.

Active 1929  
 oil & gas lease  
 (not involved  
 in lawsuit)

SURFACE LEASE AND RIGHTS-OF-WAY GRANT

THIS AGREEMENT made and entered into effective as of the 10<sup>th</sup> day  
 of May, 1961, by and between John Heyd, Ferdinand Heyd, Jr., Mary  
 Heyd Fontenot and Rosa Heyd Corbello, hereinafter called "LESSOR", and Shell  
 Oil Company, a Delaware corporation duly authorized to do and doing business  
 in the State of Louisiana, hereinafter called "LESSEE";

Expired 1961  
 30 year  
 surface lease  
 (basis of lawsuit)

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## Corbello

### SURFACE LEASE AND RIGHTS-OF-WAY GRANT

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Expired 1961  
30 year  
surface lease  
(basis of lawsuit)

8. LESSEE agrees to indemnify and hold LESSOR harmless from any and all loss, damage, injury and liability of every kind and nature that may be caused by its operations or result from the exercise of the rights or privileges herein granted. LESSEE further agrees that upon termination of this lease it will reasonably restore the premises as nearly as possible to their present condition.

"LESSEE further agrees that upon termination of this lease it will reasonably restore the premises as nearly as possible to their present condition"

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## Corbello

- \$33,000,000 clean up costs for 120 acres (valued at \$108,000)
- Don't have to use money to clean up
- \$4,000,000 for attorney fees

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## Corbello

- What's the beef?

Prior to Corbello (assuming Corbello change prior law), in property restoration suits sounding in tort, restoration costs are generally limited by the value of the property unless the plaintiff had some sort of personal interest in the property.

Roman Catholic Church v. La. Gas Serv. Co. 618 So. 2d 874 (La. 1993)

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\$33 MM looking pretty good.

How do I locate areas where I may successfully litigate for environmental damages?

After Corbello, landowners starting feeling a little out of sorts and suspected big oil polluted their land and the landowner decided to seek out a lawyer to further investigate.

Not!!!!!!

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## How do I locate areas where I may successfully litigate for environmental damages?

Step 1 - Recognize that industry practices were different 40 to 80 years ago.

Produced oil was stored in open unlined pits to benefit from the "Law of Capture". During periods when there wasn't a market for all of the oil production, the operator must continue to produce the oil and convert it to his possession via storage in pits that he owned or controlled at the surface so his neighbor didn't capture his oil via subsurface migration.

What happens to some of the oil that is sitting around in an unlined pit?

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## How do I locate areas where I may successfully litigate for environmental damages?

Step 1 - Recognize that industry practices were different 40 to 80 years ago.

Produced salt water was stored in open unlined pits prior to the invention of salt water disposal wells and, afterward, served as the suction (feed) tanks for injection pumps for salt water disposal wells.

Some of these suction tanks also functioned as skimming tanks whereby the oil, not separated from the water by the mechanical separators, would be skimmed from the water in these holding tanks.

What happens to some of the water that is sitting around in an unlined pit?

## How do I locate areas where I may successfully litigate for environmental damages?

### Step 2 - Locate these babies

It's best to narrow one's search to southern Louisiana since much if not all of the salt and hydrocarbon impacted soil could be the result of the salt domes or salt water invasion from the coast. In fact, many salt domes were discovered after observing naturally occurring gas seepage and paraffin dirt at the surface

(Salt Domes of South Louisiana, New Orleans Geological Society)

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Awful sounding  
stuff in the cap rock  
of salt domes

### TEXAS AND LOUISIANA CAP ROCK

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TABLE I SALT-DOME CAP-ROCK MINERALS			
Mineral Name	Composition	Remarks	
Anhydrite	$\text{CaSO}_4$		
Gypsum	$\text{CaSO}_4 + 2\text{H}_2\text{O}$	Variety, rock gypsum	
Gypsum	$\text{CaSO}_4 + 2\text{H}_2\text{O}$	Variety, selenite	
Gypsum	$\text{CaSO}_4 + 2\text{H}_2\text{O}$	Variety, satin spar	
Gypsum	$\text{CaSO}_4 + 2\text{H}_2\text{O}$	Variety, alabaster	
NORM	Barite	Variety, massive	
	Barite	Variety, oolitic	
Celestine	$\text{SrSO}_4$		
Calcite	$\text{CaCO}_3$		
Aragonite	$\text{CaCO}_3$		
Strontianite	$\text{SrCO}_3$		
Smithsonite	$\text{ZnCO}_3$		
Dolomite	$\text{CaCO}_3 \cdot \text{MgCO}_3$		
Pyrite	$\text{FeS}_2$		
Marcasite	$\text{FeS}_2$		
Galena	$\text{PbS}$		
Sphalerite	$\text{ZnS}$		
Hauzerite	$\text{MnS}_2$		
Alabandite	$\text{MnS}$		
Realgar	$\text{As}_2\text{S}_3$		
Chalcopyrite	$\text{CuFeS}_2$		
Chalcocite	$\text{Cu}_2\text{S}$		
Enargite	$\text{Cu}_3\text{AsS}_4$		
Hallite	$\text{NaCl}$		
Quartz	$\text{SiO}_2$		
Hematite	$\text{Fe}_2\text{O}_3$		

Table I. "Texas and Louisiana Salt Dome Cap Rock Minerals"  
Bulletin of the American Association of Petroleum Geologists, Vol 18, No. 2, February, 1934

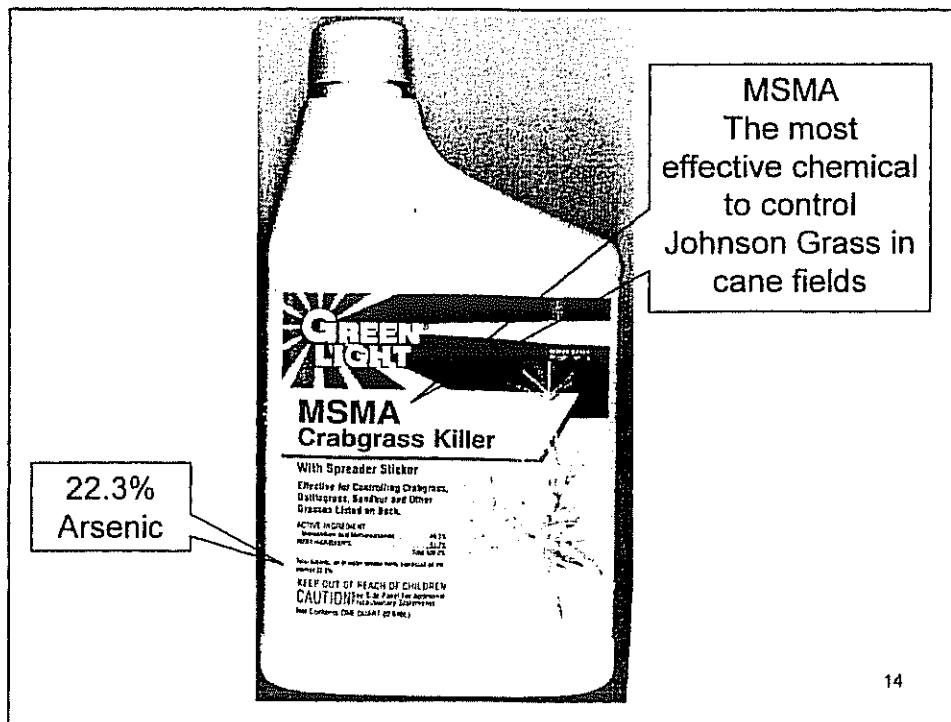
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## How do I locate areas where I may successfully litigate for environmental damages?

Step 2 - Locate these babies

It's best to narrow one's search to southern Louisiana since a lot of sugar cane was grown in that area.

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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 2 - Locate these babies

It's best to narrow one's search to southern Louisiana since I can almost be assured of a rich environment of deep pockets:

Chevron & Texaco  
Shell Oil Company  
BP America & Amoco & Vastar  
Exxon

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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 2 - Locate these babies

Locate the old fields that were producing during the early periods when open pits were used.

Prepare an operatorship chronology to insure at least one deep pocket is on the hook. If not, place project on shelf for later consideration, if any.

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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 3 - Commence soft reconnaissance

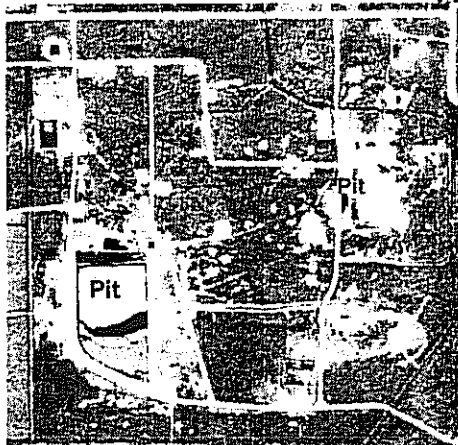
Order aerial photos of the field area.

1933, 1952, 1957, 1965, 1971, 1975, 1980,  
1989, 1994, 1998

Determine locations of pits from aerial photos.  
Prepare base map showing surface features  
& old pits.

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Aerial photo  
10/25/68  
160 acre Corbello tract



Aerial photo  
2/22/40  
Fontenot tract

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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 4 - Sign up clients in areas of old pits

Step 5 - Start spending money for investigations

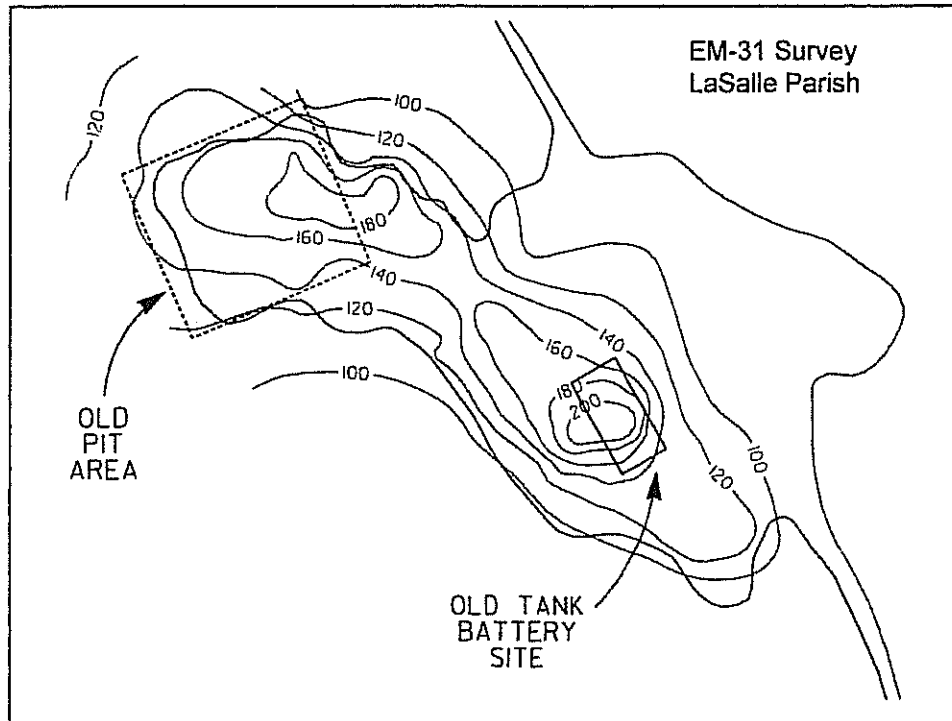
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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 6 - Perform preliminary survey of the old pit area(s)  
using a Geonics EM-31 conductivity device

An EM-31 device is carried from location to location on the surface and, at each location, the surveyor stops, takes a conductivity measurement and records his location via GPS. Once the area survey is completed, the surveyor has an indirect measurement of the conductivity of the soil to a depth of 18' at various locations throughout the suspected salt water impacted area. He now is able to provide the optimum location for soil borings and soil sampling.

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How do I locate areas where I may  
successfully litigate for environmental damages?

- Step 7 - Drill soil borings to obtain soil samples at the optimum locations indicated by the EM-31 survey. (A process similar to that of seismic indicating the optimum location to drill oil & gas wells)
- Step 8 - Drill a few additional soil borings away from the hot spots to delineate the edges of the plume of contaminated soil.
- Step 9 - Analyze soil samples for salt, heavy metals (including Arsenic) and Hydrocarbons (including paraffin dirt)

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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 10 - Allege damages associated with salt and hydrocarbons in the soil only (i.e, not within usable ground water).

Dig it up. Haul it off. Dump it at some facility. Haul in new dirt to replace the bad stuff.

Don't forget a 45° bevel around the parameter.

\$75 cubic yard for digging, hauling and replacing.

Jennings Field, 285 acres, 10' deep, \$345 MM

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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 10 - Problems I'll address after I get the money

What to do with those homes, businesses and state highways while I dig out the earth beneath same.

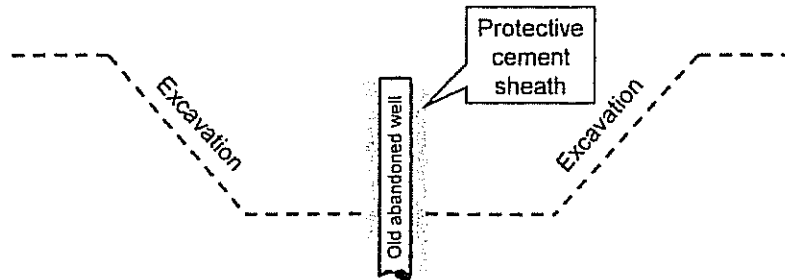
The cement sheath surrounding the casing of active and plugged oil and gas wells will likely loose its integrity once the soil is removed around these wells.

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## How do I locate areas where I may successfully litigate for environmental damages?

Step 10 - Problems I'll address after I get the money

The cement sheath surrounding the casing of active and plugged oil and gas wells will likely lose its integrity once the soil is removed around these wells.

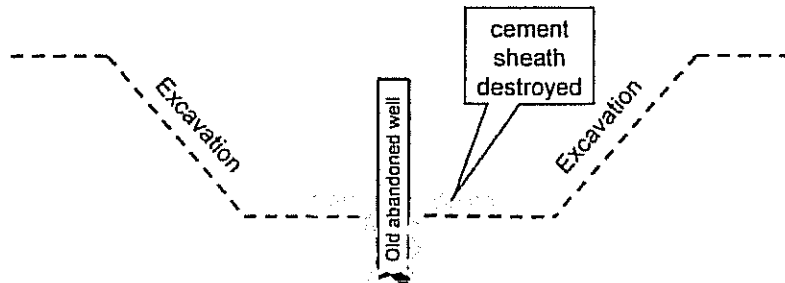


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## How do I locate areas where I may successfully litigate for environmental damages?

Step 10 - Problems I'll address after I get the money

The cement sheath surrounding the casing of active and plugged oil and gas wells will likely lose its integrity once the soil is removed around these wells.



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How do I locate areas where I may  
successfully litigate for environmental damages?

Step 11 - Allege damages associated with contamination of  
the Chicot aquifer (source of all drinking water)

Drill wells to produce water from the Chicot aquifer.

Produce water from the Chicot aquifer and  
dispose of same in a disposal well until aquifer  
is no longer salty.

Jennings Field, 5 wells, \$4.20/barrel, 59 years  
\$767 MM

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How do I locate areas where I may  
successfully litigate for environmental damages?

Total remediation claims for Jennings Field

**\$1.48 billion**

(\$1,644,444 per acre)

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## What's Happened Since Corbello?

July 2, 2003

Louisiana legislature passed **Act 1166** which requires the notification to the Department of Natural Resources (LDNR) & Department of Environmental Quality (LDEQ) if a lawsuit is filed to recover damages for the evaluation & remediation of any contamination that is alleged to impact or threaten usable groundwater.

Most important, funds awarded for groundwater contamination must be placed in the registry of the court and must be used for the clean up.

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## What's Happened Since Corbello?

January 19, 2005

Terrebonne Parish School Board v. Castex Energy, Inc.  
893 So. 2d 789 (La. 2005) ("Castex")

Louisiana Mineral Code Section 122 requires mineral lessees to act as reasonably prudent operators. Louisiana Supreme Court ruled that Section 122 does not require a lessee to restore the surface to its original condition absent proof that he exercised his rights under the lease in an unreasonable or excessive manner.

i.e., normal wear and tear is allowed and creates no cause of action.

Castex does not apply if the lease contains an expressed clean up obligation or if a surface lease is involved.

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## What's Happened Since Corbello?

January 19, 2005

Terrebonne Parish School Board v. Castex Energy, Inc.  
893 So. 2d 789 (La. 2005) ("Castex")

Louisiana Mineral Code requires lessees to act as reasonable persons. Louisiana Supreme Court ruled that a lessee to restore the surface to its original condition absent proof that he exercised his rights under the lease in an unreasonable or excessive manner.

Major issue = What's normal wear and tear?

i.e., normal wear and tear is allowed and creates no cause of action.

Castex does not apply if the lease contains an expressed clean up obligation or if a surface lease is involved.

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## What's Happened Since Corbello?

June 8, 2006

Plaintiffs had figured out method to avoid application of Act 1166. Big Oil contaminated my dirt but my usable groundwater is OK.

Louisiana legislature passed **Act 312** which requires the notification to the Department of Natural Resources (LDNR) & the Attorney General's office if a lawsuit is filed to recover damages for the evaluation & remediation of any contamination associated with oil and gas activity.

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## What's Happened Since Corbello?

June 8, 2006    Act 312

Upon admission or finding of liability, conflicting clean up plans must be submitted to the LDNR. The LDNR must hold a hearing and adopt the plan it finds most "feasible".

Trial court must adopt LDNR's approved plan unless, by the preponderance of the evidence, the evidence indicates another plan is more feasible.

Funds must be deposited into the registry of the court and used exclusively for the clean up.

Liable party subject to all costs including attorney fees, LDNR and AG's costs, and evaluation costs.

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## What's Happened Since Corbello?

June 8, 2006    Act 312

The plan that is most feasible will probably incorporate the philosophy and provisions of:

LDNR's Order 29-B, Administered by the Office of Conservation (29-B)

<http://dnr.louisiana.gov/CONS/Title43.ssi>

LDEQ's Risk Evaluation and Corrective Action Program (RECAP) 129 pages

<http://www.deq.louisiana.gov/portal/tabid/131/Default.aspx>

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## What's Happened Since Corbello?

LDNR's Order 29-B, Administered by the Office of Conservation

- Chapter 3 – Pollution Control – onsite storage, treatment and disposal of nonhazardous oilfield waste (oilfield pit regulations)
- Chapter 4 - Pollution Control – Injection/disposal well regulations
- Chapter 5 - Off-site storage, treatment and/or disposal of oilfield waste (commercial facility regulations)

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## What's Happened Since Corbello?

LDEQ's Risk Evaluation and Corrective Action Program (RECAP) 129 pages

Addresses risks to human health and the environment posed by the release of chemical constituents to the environment.

RECAP evaluation:

1. Determine if corrective action is necessary for the protection of human health and the environment
2. Identify constituent levels in impacted media that do not pose unacceptable risks to human health or the environment.

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## What's Happened Since Corbello?

June 8, 2006    Act 312

"Section 3. The provisions of this Act shall not apply to any case in which the court on or before March 27, 2006 has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued."

i.e., Where's my copy of that pesky constitution?

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## Hiccups on the way to Hawaii

Prematurity If the clean up obligation is based on prudent operations under the oil and gas lease, does the operator have any obligations prior to the termination or expiration of the lease?

Maybe on lands not being used for current oil and gas operations.

Maybe excessive use (damage) to lands currently being used for oil and gas operations.

See Dore Energy Corp. v. Carter-Langham, Inc., et al,  
901 So. 2d 1238 (La App. 3<sup>rd</sup> Cir. 2005) writ denied 908 So. 2d 1047

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## Hiccups on the way to Hawaii

Corp of Engineers will not issue permits to dig up wet lands.

Clean up on lands with current oil and gas producing facilities?

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## Experience at the LDNR

Drew Estate filed lawsuit	March 1994
3 <sup>rd</sup> Circuit booted clean up evaluation to the LDNR	February 1996
Commissioner's conference to review results of voluntary soil & ground water tests	February 1999
Commissioner issues Consent Order requiring remediation of Drew property	April 1999
First of four days of hearings under Docket 00-78 to address the scope & method of remediation	January 2000
Remainder of four days of hearings under Docket 00-78 to address the scope & method of remediation	January 2001
Lawsuit settled	June 2003

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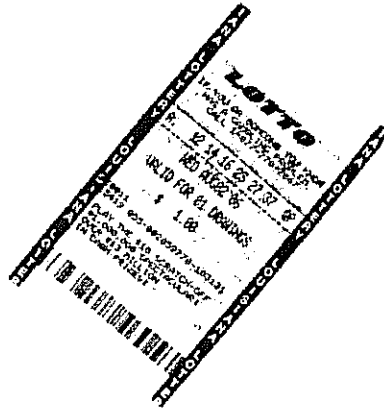
## Experience at the LDNR

Open meetings law - Does not apply in practice at the  
Office of Conservation of the LDNR

Exhibit "A" – An exhibit that the Commissioner of  
Conservation relies upon for his decision  
that is prepared by his staff after the  
close of the hearing. No opportunity for  
cross examination concerning this (these)  
exhibit.

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## A view from the Trenches: Legacy Liability in Louisiana



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South Texas College of Law  
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