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Commercial Deep-Well Injection Waste Disposal Facility: Louisiana Appellate Court Addresses Challenge to Permit Approval

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The Court of Appeal of Louisiana for the First Circuit (“Court”) decided in favor of the Louisiana Department of Natural Resources, Office of Conservation Commissioner (“the Commissioner”) in his judgment to issue a permit for the construction and operation of a Class II, deep-well injection waste disposal facility. See *Gossen v. Welsh*, 2016 WL 3143952.

A key point of contention was a statutory requirement that restricted placement of these types of facilities.

On September 21, 2011, appellees, LA Tank-Branch, L.L.C. (LA Tank), submitted a permit application to the Commissioner requesting approval to place one of the company’s deep-well disposal facilities in Acadia Parish. A public hearing was subsequently held to address the application. A focus of the public comments was the placement of the facility.

The comments addressed the purported existence of several private water wells located within 1,000 feet of the proposed facility site. Louisiana law dictates that placing a deep-well waste disposal facility within 1,000 feet from any private water well is unlawful.

Upon receiving knowledge of the possible existence of private water wells near the proposed facility site, the Commissioner conducted a field inspection. The inspection identified a private water well located within 1,000 feet of the proposed site. Based on the field inspection, the Commissioner approved LA Tank’s permit application. However, the approval was conditional on LA Tank conforming to the requirement that the facility site not be within 1,000 feet of any private well.

LA Tank submitted evidence of this compliance with documentation that the acreage of the proposed site had been reduced from 14.46 to 14.35 acres.

The Gossens (“Appellants”) filed a petition seeking judicial review of the Commissioner’s decision approving LA Tank’s permit application for the waste disposal facility. They presented evidence of an additional private well located within 1,000 feet of the proposed site, while also taking into account the acreage reduction.

After evaluating the supplemental evidence provided by the Gossens, the Commissioner affirmed his previous decision to approve LA Tank’s permit application. However, he again conditioned approval of

construction contingent on the site location conforming to Louisiana law. The district court reviewed the judgment and upheld the Commissioner.

The appellants contended on appeal that the Commissioner's actions were unlawful because the decision to grant the permit was in violation of a statutory provision.

The appellate court held that the Commissioner's findings are given great weight and would be upheld unless "manifestly erroneous or clearly wrong." The Commissioner and LA Tank never argued that there were not private wells located within 1,000 feet from the proposed facility sites. Instead, they contended that the Commissioner's issuance of the permit conformed with state law. Specifically, the Commissioner made the construction of the site conditional on LA Tank adhering to statutory provisions.

The appellate court agreed with the Commissioner and LA Tank.

The appellate court affirmed the discretionary power of the Commissioner by reasoning that he analyzed possible alternative sites and was able to conclude that the site proposed by LA Tank in Acadia Parish "afforded the best balance of environmental costs versus economic, technical, and social benefits." See *Matter of Browning-Ferris Indus. Petit Bois Landfill*, 657 So.2d 633, 638 (La. App. 1 Cir. 1995). The court also upheld the "manifest error standard" by which a court of appeal may not disturb the Commissioner's findings of fact as long as they adhere to reasonableness. See *Indus. Pip, Inc. v. Plaquemines Par.*, 152 So.3d 158 (La. 2014).

[A copy of the opinion can be downloaded here.](#)