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May 4, 2012

Mr. Don G. Briggs
Louisiana Oil & Gas Association
P.O. Box 4069
Baton Rouge, Louisiana 70821-4069

Re: Amendment 1 to SB 760.

Dear Mr. Briggs:

I am writing as the President of a Louisiana-based, independent oil and gas exploration and production company. It is my understanding that an amendment has been proposed or added to SB 760 which would create a waiver of indemnity rights by any party who wanted to make a limited admission of responsibility for legacy sites.

While I appreciate the efforts of those who are trying to find relief for independent operators from the catastrophic effects of abusive legacy lawsuits, it is clear to me that the proposed amendment will not provide that relief.

In the first place, the root problem is not an issue of indemnity agreements between majors and independents. There is nothing inherently unfair about indemnity agreements. In fact, they are common in transfers of properties between independents. The root problem is abusive lawsuits being pursued by a small contingent of plaintiff attorneys who go into court and tell juries that their clients need ridiculous sums of money to clean up messes (that oftentimes don't exist). After the juries make an award, the plaintiff attorneys and their clients pocket the money and don't clean up anything. Act 312, following *Corbello*, only partially fixed that abuse, by putting the money required for a regulatory cleanup in the registry of the court. Even after Act 312, plaintiff attorneys are still going into court and are still telling juries that their clients need even more money to perform a cleanup in excess of regulatory standards, and, after the juries make an award or after the defendants make a settlement, they are still pocketing the money and not using a dime of it to clean anything up. **This** is the root problem that needs to be addressed. This problem will never be resolved by focusing on collateral issues like indemnity agreements.

In the second place, Amendment No. 1 does not provide real relief to independents, and is just as likely to be hurtful to independents as helpful.

- The first sentence of proposed G(1) says that any party admitting responsibility shall waive any and all legal and contractual rights to indemnity or contribution for the cost of implementing the feasible plan.

    - This effectively prevents an independent from making a limited admission. In our cases, Tensas Delta would have made limited admissions, if that right had been available to us. Under Amendment 1, we would never do so, if the result was that we had to give up indemnity and contribution rights.

    - Indemnity and contribution rights don't just arise by virtue of sales from majors to independents. They arise in sales from one independent to another. Contribution claims arise by mere assignments of leases, whether the assignment contains a contractual indemnity or not. Virtually every assignment in the oil patch makes the assignee responsible for performing the obligations under the leases, including plugging and abandonment and site restoration.

    - Indemnity and contribution rights also arise under joint operating agreements. Most independents do not drill 100% of every well. They have partners who are called working interest owners. In most legacy suits, operators may be named as defendants, but their working interest partners typically are not. This provision would prevent an operator from collecting contribution or indemnity from his own working interest partners.

    - In our cases, we are being sued as the mineral owner who granted leases to others, and our lessees are the real parties responsible for operations. We have indemnity and contribution rights under those leases. Under this amendment, we could never make a limited admission because to do so would relieve the party who actually made the mess (if any mess exists).

    - Independents are just as likely to be **adversely affected** by this provision as they are to be benefitted by this provision.

    - A long-term effect of this amendment is that it will make it more difficult for independents to acquire existing fields, and that will adversely affect drilling and investment in Louisiana.

- The last sentence of proposed G(1) says that the waiver of indemnity does not apply to "any damages beyond the jurisdiction of the department." Damages beyond the jurisdiction of the department would include the private claim for cleanup to "original condition" or any claim for cleanup in excess of regulatory standards.

- The abusive part of legacy suits is not the regulatory cleanup. It is the outrageous claims for hundreds of millions of dollars (and sometimes billions of dollars) for cleanups in excess of regulatory standards. As I have said before, the mere threat of exposure to these claims, whether they have an ounce of validity or not, is sucking the life out of Louisiana independents. It adversely affects our access to capital and it is causing us to invest our drilling dollars in other states. This sentence takes away the protection from the very thing where we most need it!

- On the flip side, if the waiver also affects the private claims, why would a major (or anyone else who has indemnity claims) ever make a limited admission?

- The whole purpose behind limited admissions was to identify and address real environmental concerns early and effectively. The proposed amendment will surely defeat that purpose.

Thank you for all of your good work on this very important issue. Please feel free to share this letter with others. It is critical that legislators and policy makers realize that proposed Amendment 1 is no friend of Louisiana independent oil and gas operators and that it offers no effective relief from legacy lawsuit abuse.

The best way to help is pass HB 618 and allow all persons in the industry to:

(1) admit to regulatory liability (without creating other unintended or unfavorable consequences);

(2) get a science-focused (not money-focused) plan to deal with real environmental issues; and

(3) to tell the truth to juries and inform them about the regulatory cleanup of properties.

Sincerely,

TENSAS DELTA EXPLORATION COMPANY

By 
Scott C. Sinclair, President

SCS/my