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The Louisiana Department of Conservation

Leslie Moses

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LOUISIANA stands as one of the foremost producers of oil and gas in the nation. It has gas reserves reaching an approximate figure of seventeen trillion feet,[1] and the annual revenue from its severance tax is in excess of $13,000,000. Its economy today is dependent upon the oil and gas industry for more than half its total revenue. With one industry, based upon the development of the State's greatest natural resource, so vastly important to the welfare of the people, the conservation program must necessarily be sound.

Louisiana, in its wisdom and foresight, has long recognized the necessity of protecting and conserving such a natural resource, and it is believed that the structure of its program of conservation is the best in the United States. The present Department of Conservation was established and created under the provisions of the 1921 Constitution,[2] which elsewhere provided that the Governor should appoint a Commissioner of Conservation with the advice and consent of the Senate.[3] The courts have held, accordingly, that the Commissioner of Conservation is a constitutional officer of the State of Louisiana.[4] Its conservation statute[5] is looked upon as one of the two best in the United States, the other being the Arkansas statute.[6]

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[1] In an address before the Mineral Law Section of the American Bar Association former Governor Sam H. Jones said in recent estimates reserves ranged from 11 to 19 trillion cubic feet. See Proceedings, Mineral Law Section, A.B.A. (December, 1946) 60.

[2] LA. CONST. (1921) Art. VI, § 1; 30 LA. REV. STAT. (1950) § 1.

[3] LA. CONST. (1921) Art. V, § 18.

[4] State v. Maestri, 199 La. 49, 5 So. 2d 499 (1941).

[5] La Acts 1940, No. 157; 30 LA. REV. STAT. (1950) § 1 *et seq.*

[6] Ark. Acts 1939, No. 105, as amended by Acts 1941, No. 305.

Louisiana's statute contains the policy of the State relative to conservation, and a study of its salient features will reveal that instead of being unwieldy and unworkable, it is most efficient and facile. Needless to say, the genius of the statute is that it is based upon the experience of Louisiana's sister states, and recognizes that the factors of conservation must be conscientiously dealt with by the regulatory body and administered without fear, favor or influence. It is the outgrowth of legislative experience, judicial interpretations and constitutional approvals dating back almost fifty years. It is not generally realized, perhaps, but Louisiana has been one of the pioneers in the enactment of conservation laws. In no other field is the evolution of knowledge concerning the physical facts of oil and gas production so clearly traceable on the statute books as in Louisiana.

Soon after the discovery of the Caddo Field a disastrous blowout and fire occurred in a well called "The Ananias Hunting & Fishing Club No. 1."[7] The legislature in 1906 passed a law making it a criminal offense to "negligently permit" a gas well to "go wild" or "wastefully burn,"[8] which marked the beginning of legislative control of the industry in the state.

There have been many pieces of legislation since then directed toward the conservation of oil and gas. Originally a Commission of Natural Resources was formed;[9] then a Department of Mining and Minerals;[10] then a Department of Conservation which vested in the Commissioner the protection of all the natural resources of the State.[11] In addition there were numerous other statutes dealing with various phases of oil field practice and procedure.[12] Each one gave recognition to some additional aspect of the importance

[7] MINERAL LAW SECTION, A.B.A., LEGAL HISTORY OF CONSERVATION OF OIL AND GAS (1938) 61.

[8] La. Acts 1906, No. 61.

[9] Acts 1908, No. 144.

[10] Acts 1910, No. 254.

[11] Acts 1912, No. 127.

[12] Acts 1912, No. 91; Acts 1918, Nos. 168, 268 and 270; *see* Moses, *Statutory Regulations in the Carbon Black Industry*, 20 Tulane L. Rev. 83 (1945).

of the industry to the state and the value to public as well as private interests in seeing that the resources were utilized to the best advantage.

The first general statutes were enacted in 1924, one covering gas,[13] the other oil.[14] These two statutes marked a vital step forward in petroleum conservation. For the first time *in any state* there was recognized the principle of ownership in a common source of supply co-extensive with the individual ownership in the land overlying the reservoir.

The first combined statute[15] was modeled after New Mexico's law,[16] which at that time was considered the most advanced ever drafted, and which is still in existence. Its limitations were recognized: it did not adequately define waste; it based proration on market demand alone; the spacing and pooling provisions did not always prevent unnecessary drilling; it did not provide for recycling and pressure maintenance; the penal provisions were of no great value; and the general procedural articles were inadequate.

In 1940 the Louisiana Legislature recognized that piecemeal amendment did not solve the problem and that a complete revision of all legislation by means of a new statute was desirable. Act No. 157 of 1940 was formulated and passed. It embraced the best features of the New Mexico law, the then recently adopted Arkansas law,[17] and recommendations of the Interstate Oil Compact Commission. As a result, a large part of it now appears in the model conservation act form recommended for use by the Interstate Oil Compact Commission.[18]

The new act differed in four major aspects from the 1936 statute, as follows:

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[13] Acts 1924, No. 252.
[14] Acts 1924, No. 253.
[15] Acts 1936, No. 226.
[16] N. M. Laws 1935, c. 72.
[17] *Supra* note 6.
[18] See Interstate Oil Compact Commission, *A Form for an Oil and Gas Conservation Statute* (1949).

(1) The old act placed its major emphasis on the limitation of production to "reasonable market demand," whereas in the new statute the limitation was predicated squarely upon the prevention of waste.

(2) In order to prevent one property owner from being placed in a less advantageous position than another by reason of the imposition of any regulation, the new statute provided that at the time such action was taken, other action would be taken as would protect the correlative rights of all co-owners of the property subject to regulation.

(3) The new statute recognized that the drilling of unnecessary wells constituted waste, and so proper spacing regulations could be made to eliminate unnecessary drilling. Under the 1936 act spacing could be established, but if a lease owner desired to drill on a smaller tract he could do so, subject only to the penalty of a reduction in allowable.

(4) The new statute recognized the different problems presented in the development of gas-condensate fields and the need for pressure maintenance and recycling, and granted the Commissioner the authority to enter necessary rules and orders to make possible modern programs of recycling and pressure maintenance.

One of the foremost questions of concern was delegating power to a regulatory body. The authority granted is rather specific and detailed. During the formative period of the statute there was discussion as to whether it should contain simple prohibitions against waste, assuming that the necessary authority to enforce would follow, or whether it should contain specifically the means by which the regulatory body could control waste. The latter view prevailed. Whether such specific authority is necessary as a matter of law is not known; however, it is unquestionably the fact that much litigation has been obviated as a result of its inclusion.

A great danger in drafting legislation with particularity lies in the fact that engineering principles change from time to time.

It was necessary, therefore, to make the law flexible enough to permit enforcement under new discoveries, advanced methods and more up-to-date engineering data. The statute has been so drawn that it not only sets forth with particularity the authority of the Commissioner but also is flexible enough to permit the use of the most advanced engineering and geological information.

A concise examination of the essentials of this act reveals that first of all it prohibits waste:[19] both of oil and gas, with a complete definition of waste.[20] The definition, together with the detailed regulations that follow, constitutes the heart and soul of this sound conservation law. The statute is comprehensive and permits the Commissioner to relate those efforts and regulations, which include proration, limited withdrawals, spacing and operating practices, and pooling and unitization, to the physical conditions which have to do with the kind of waste defined.

There follow definitions of other terms used, and the Commissioner is granted certain broad powers,[22] among them being the enforcement of drilling and spacing regulations, the proration of production, securing copies of logs, surveys and drilling reports, installing meters, and many others necessary and incidental to proper drilling practice and procedure and sound conservation.

Another section provides that whether the production from a pool be limited or prorated, no rule, regulation or order of the Commissioner shall have the effect of forcing a producer, in order to obtain his just and equitable share of the production, to drill a well in addition to that which will produce his share without waste, or to occasion drainage from a tract unless additional wells be drilled.[23] The same section authorizes the establishment of drilling units and defines a drilling unit as the "maximum area which may be efficiently and economically drained by one well."[24]

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[19] La. Acts 1940, No. 157, § 1; 30 LA. REV. STAT. (1950) § 2.
[20] *Id.* § 2; 30 LA. REV. STAT. (1950) § 3.
[22] § 3.
[23] § 8.
[24] § 8 (b).

A necessary weapon in the enforcement of drilling patterns is the power of forced integration. Spacing rules and the authority of regulatory bodies to adopt such have, in a large measure, revolutionized the petroleum industry. As an adjunct to the right to fix drilling units, the Louisiana statute has given the Commissioner the authority to pool lands as a drilling or producing unit.[25] If those owners within a drilling unit refuse to participate, they may be forced to do so after due notice and hearing. The constitutionality of this section has been upheld by the Louisiana Supreme Court;[26] so there are no problems now involved in such enforced unitization.

There is a great difference between the unitization of a drilling unit and the unitization of a field or pool. It is comparatively easy to administer the provisions of the statute once the drilling unit has been established by the Commissioner, but it is quite another thing to unitize an entire area. It is believed that the Louisiana statute is the first, and possible the only one, that attempts to make any provision for such type unitization. This effort is couched in the following language:

> "In order to prevent waste, and to avoid the drilling of unnecessary wells, the Commissioner shall, after notice and upon hearing, determine the feasibility of and require the re-cycling of gas in any pool or portion of a pool productive of gas from which condensate or distillate may be separated or natural gasoline extracted, and promulgate rules to unitize separate ownerships and to regulate production of the gas and re-introduction of the gas into productive formations after separation of condensate or distillate, or extraction of natural gasoline from such gas."[27]

The problem of distribution of production and allocation to fields was not overlooked, even though experts in the field of conservation are in disagreement as to whether proration should be

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[25] § 9.

[26] Hunter Company v. McHugh, 202 La. 97, 11 So. 2d 495, *aff'd*, 320 U. S. 222 (1942); Hood v. Southern Production Company, 206 La. 642, 19 So. 2d 336 (1944).

[27] § 4(b).

by field or by wells alone. Louisiana adopted the view that it should be by fields,[28] but it must be on a reasonable basis and on such a basis that wells of settled production will not be abandoned prematurely.[29] As a consequence, stripper wells have been given an allowable of all they are capable of producing, and flush wells are limited to factors of market demand and maximum efficient recovery. The testing of the rule of allocation between fields has never come up in Louisiana outside of the regulatory body itself. It is speculative as to what exactly the rule is, but it is believed that the courts would be most reluctant to interfere with the findings of the Commissioner.

Since the teeth of any statute are its penal clauses, Louisiana's Commissioner is authorized to go to the courts whenever there is a violation or a threat of violation of the statute or any order issued.[30] If he does not, any person affected can file suit. "Hot" oil is prohibited, and the condemnation of any product produced in violation of the statute is authorized[31] and its ultimate disposition set out in detail.[32]

In this discussion we are concerned primarily with the administrative procedure before the Commissioner of Conservation and his staff. It should be borne in mind that the most important feature with respect to the powers granted the Commissioner is that no regulation or order can be issued, especially those requiring the exercise of judgment, without a hearing called after due notice to all parties in interest, giving them an opportunity to appear and express themselves.[33] It should be noted that the rules or order of procedure in hearings are those of the Commissioner, who has been vested with full power to prescribe rules and regulations.[34]

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[28] § 10.
[29] § 10(a).
[30] § 13.
[31] § 18.
[32] § 19.
[33] § 5.
[34] § 5(a).

Acting by virtue of such authority, the Commissioner has issued a set of Rules of Procedure for Public Hearings.[35]

No regulation, order, exception or rule can be issued except after a public hearing called for that particular purpose, after ten days' notice in the manner and form prescribed both by the statute[36] and the Rules of Procedure. The notice required to be given must be published in the official journal of the State of Louisiana,[37] and usually in the official journal of the parish in which the land affected by the hearing lies. In addition to such official notice by publication, copies of the notice are sent to all parties in interest of whom the Department has knowledge. In this connection it is customary for the applicant to annex to his petition for a hearing a list of such interested parties known to him. If such a list is not annexed, he is usually requested to furnish the Department with it. One should not overlook the importance of the requirement of proper notice and hearing, for otherwise the constitutional requirement of due process of law would be lacking and any order issued would be void. In this connection it may be added that the statute has recognized the fact that immediate action is sometimes necessary. In the event of an emergency the Commissioner is permitted to issue a rule, regulation or order without a public hearing or notice, provided that the effectiveness of the order can last but fifteen days, unless extended by a new order, issued after due notice and a hearing.[38]

Practice before the Commissioner and his staff at hearings is most informal.[39] There are no technical rules of procedure, nor are court rules of evidence strictly adhered to. While the evidence is transcribed by a reporter, the matter of proper evidence is of little import. The primary purpose of the hearing is to obtain the necessary facts concerning the subject of the hearing with as

[35] La. Dept. of Conservation, *Rules of Procedure for Public Hearings*, adopted March 25, 1948.

[36] § 5(b).

[37] La. Dept. of Conservation, *Rules of Procedure for Public Hearings*, ¶ 3.

[38] § 5(c).

[39] § 5(a).

little delay as possible, including technical impediments. The Commissioner usually permits everything to go into the record, leaving it to the courts, if a disputed matter ever goes that far, to decide whether some of it was improperly admitted or not. Since legal, engineering and geological problems in connection with the development of oil and gas fields are inseparable, one often finds engineers conducting hearings on behalf of interested parties, cross-examining other engineers or geologists on highly technical matters, or sitting beside the lawyer, constantly advising him. It must be borne in mind that every interested party is given a right to be heard whether or not he is represented by legal counsel or technical advisors.

Despite the informality of the hearings, the Commissioner is empowered to subpoena witnesses, call for the production of documents and request the district court to assist him in enforcing the orders he may issue.[40] In testifying before the Commissioner no person can be subjected to criminal prosecution because of what he may testify to;[41] this provision satisfies the immunity clause of the Constitution of Louisiana.[42] Perjury, however, is punishable.[43]

The public hearings heretofore mentioned are set in motion by a request in writing by any party interested in the subject matter of the hearing.[44] Of course, the Department can, of its own initiative, request a hearing. Within thirty days after the hearing the Commissioner is required to take action thereon,[45] and upon his failure to do so, any interested party has the right to compel action by him by the filing of a writ of mandamus in the court.[46] Any party aggrieved by the ruling of the Commissioner may resort to the courts, but only after he has exhausted his administrative

[40] § 7.
[41] § 7(a).
[42] LA. CONST. (1921) Art. 1, § 2.
[43] *Supra* note 41.
[44] § 5(f).
[45] *Ibid.*
[46] *Ibid.*

remedies.[47] Court action is by way of injunction, and any suit filed may be tried summarily on ten days' notice, thus preventing someone from attempting to tie the hands of the Commissioner in the enforcement of the statute. In the trial of the case the burden of proof rests on the plaintiff, for there is a prima facie presumption of the validity of the action taken by the Commissioner.[48] All pertinent evidence is admissible, and one has the right to introduce into evidence the entire proceedings and findings of fact of the Commissioner. The decision of the district court may be appealed to a higher court.[49]

The Louisiana conservation statute, unlike Minerva of ancient mythology, did not spring fully clothed from the mind of any one person. It was the result of labor of informed thinking, of past experience and of earnest effort on the part of lawyers, landmen, geologists, engineers and practical oil operators. The courts have been impressed by it, and have unhesitatingly indicated their approval of it. Although the statute has been before the courts in but few instances,[50] the constitutionality of the entire statute, as well as of certain specific provisions thereof, has been upheld.

Let it be fully understood that the fact that any state has a modern, practical and satisfactory conservation statute does not, perforce, insure its own effectiveness. No system devised by man can sustain itself without the integrity and diligence of those charged with its administration. Louisiana has been blessed in recent years with honest and intelligent enforcement.

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[47] § 11.

[48] *Ibid.*

[49] § 14.

[50] Hunter Company v. McHugh, Hood v. Southern Production Company, both cited *supra* note 26; Hunter Company v. Shell Oil Company, 211 La. 893, 31 So. 2d 10 (1947); Crichton v. Lee, 209 La. 561, 25 So. 2d 229 (1946); Alston v. Southern Production Company, 207 La. 370, 21 So. 2d 383 (1945); McHugh v. Placid Oil Company, 206 La. 511, 19 So. 2d 221 (1944); Placid Oil Company v. North Central Texas Oil Co., 206 La. 293, 19 So. 2d 616 (1944); Ohio Oil Co. v. Kennedy, 28 So. 2d 504 (La. App. 1946).