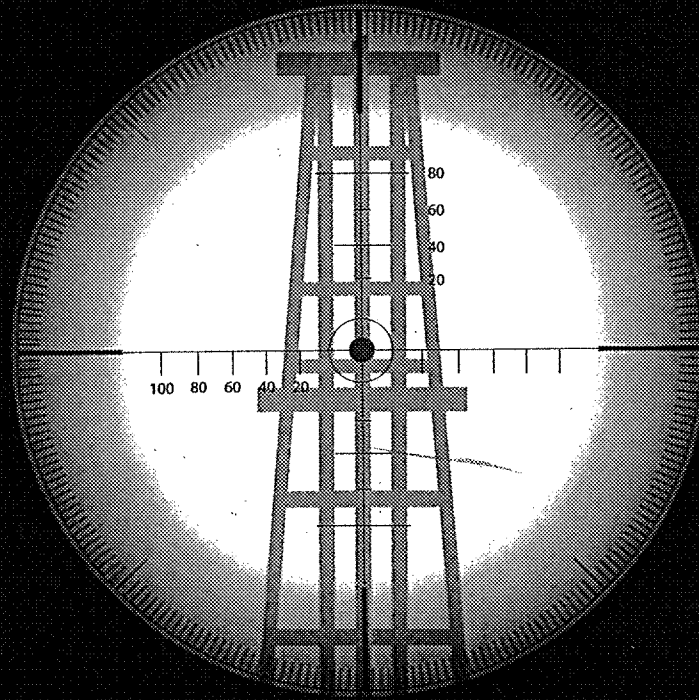


LOGA

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Salt Dome Caverns and Solution Mining

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Primarily in response to the Bayou Corne sinkhole at the Napoleonville Salt Dome, three bills increasing regulations related to salt dome caverns and salt dome solution mining obtained legislative approval during the 2013 session and were signed by Governor Jindal on June 12. The new laws require the Commissioner of Conservation to create stricter guidelines for monitoring and assessing areas around salt dome caverns and solution mining wells and provide for significant penalties for violations. The laws also impose new public notification requirements for operators and require sellers of property to disclose to buyers any known salt dome caverns within one-half mile of their property.

Legislative Update

HB 493. Representative Karen St. Germain (D-Pierre Part) authored this bill, which requires the Commissioner of Conservation to implement regulations to control solution mining injection wells, the permitting of such wells and the resulting solution mined caverns. The new regulations must include requirements for, among other things: submission of the locations of caverns in relation to other caverns and the periphery of the salt stock every five years; setback distances for new caverns from the edge of the salt stock; enhanced monitoring of existing caverns; and site assessments and updates on the stability of the salt stock and surrounding sediment.

HB 493 was unanimously passed by the House and the Senate. The act became law on August 1, 2013, and is codified at La. R.S. 30:3(16), (17), and 4(M).

HB 494. Representative St. Germain also authored HB 494, which imposes new requirements on sellers of property located near salt dome cavities, as well as salt dome owners and operators. Sellers of property are now required to disclose to buyers whether a salt dome cavity is located within one-half mile of the property being sold. Additionally, owners or operators of salt dome caverns are required to provide public notice of the location of their caverns by filing the survey plats of their cavern well locations in the parish mortgage and conveyance records. The Commissioner of

Conservation may record such notice if an owner or operator fails or refuses to do so. The failure of an owner to file or ensure that the operator has filed the required public notice may constitute grounds for an action of redhibition by a purchaser of the owner's property.

HB 494 was unanimously passed by the House and the Senate. It became law on August 1, 2013, and is codified at La. R.S. 9:3198(A)(2)(c) and 30:23.1.

SB 139. Senator Rick Ward, III (R-Port Allen) authored this bill, which authorizes the Commissioner of Conservation to assess substantial penalties for noncompliance with regulations for salt dome storage caverns or solution mining. The new law allows for a penalty of up to \$32,500 per day for each violation. However, an additional penalty of \$1 million is authorized for intentional, willful or knowing violations that result in discharges or disposals which cause severe environmental damage or endanger human life or health. Noncompliance with regulations can also result in revocation or suspension of a permit, license or variance. Additionally, failure to timely correct noncompliance with a compliance or cease and desist order could result in an additional penalty of up to \$50,000 per day for each day of continued noncompliance. The law provides criteria for assessing the amount of the penalties.

SB 139 was unanimously passed by the Senate and the House. The act became law on June 12, 2013, and is codified at La. R.S. 30:148.9(B) and 30:18(A)(6)).

Other bills. Two bills related to salt domes failed to reach final passage in the 2013 legislative session. A bill by Senator Fred Mills was rejected twice by the Senate, first by a vote of 15 to 20 and later by a vote of 17 to 19. Senator Mills' proposal sought to suspend the issuance of new permits for solution mined caverns and storage facilities in any area where there had been a man-made structural failure in a dome underlying state waterbottoms. A bill by Senator Troy Brown failed to move out of committee. Senator Brown's bill proposed a statewide moratorium on salt dome storage and solution mining.

Update on Napoleonville Dome Lawsuits and Buyouts

On August 2, the State of Louisiana filed suit against Texas Brine Co., LLC, the operator of the failed cavern at the Napoleonville Dome, and Occidental Chemical Co., the owner of the property, for environmental damage caused by the collapse of the cavern. The lawsuit was filed in Assumption Parish state court on the eve of the one-year anniversary of the discovery of the sinkhole in Assumption Parish. Numerous other lawsuits have been filed against Texas Brine and other defendants concerning the Napoleonville Salt Dome and the Bayou Corne Sinkhole in Assumption Parish. There are 10 cases pending against Texas Brine in Assumption Parish state court, while eight cases are pending in the Eastern District of Louisiana. Texas Brine announced last month that it reached buyout agreements with 63 of 92 eligible property owners in the Bayou Corne area.

Pending Proposal by AAA Regarding Methodology to Value Caver Wells for *Ad Valorem* Tax Purposes

On an annual basis, the Louisiana Tax Commission accepts proposals regarding

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the potential amendment of the Rules and Regulations that are utilized in the state to determine the fair market value, and thus the taxable value, of property. As part of this process, proposals are regularly submitted by representatives of the energy industry, including Louisiana Oil and Gas Association and the Louisiana Assessors' Association (LAA).

The commission recently conducted its annual hearings to consider proposals submitted by LOGA, the LAA and others, including a proposal by the LAA regarding the methodology for ascertaining the fair market value of brine wells used at underground cavern storage facilities (cavern wells). Historically, taxpayers, the commission and even the LAA have valued cavern wells using the methodology set forth in Chapter 9 of the Commission's Rules and Regulations regarding oil and gas properties. In Section 907, there are tables promulgated by the commission that provide the methodology for determination of fair market value of wells based on the well's location in the state, its depth and type. These tables are created using data from the American Petroleum Institute's Joint Annual Survey of the drilling costs of oil and gas wells. Taxpayers use the tables to determine the fair market value of oil and gas wells, and other service wells, including injection wells and water wells. Taxpayers have also historically

used these tables to calculate the fair market value of cavern wells.

Under the LAA's proposal, cavern wells would no longer be valued using the methodology and tables in Chapter 9, but instead, would be valued as "general business assets" using the methodology set forth in Chapter 25 of the Commission's Rules and Regulations. Even though the drilling and completion of cavern wells is functionally similar to the drilling and completion of traditional oil and gas wells and injection wells, the LAA's proposal would include 100 percent of the cost of drilling, equipping and completing a cavern well. The LAA's proposal disregards certain constitutional limitations on the taxation of property, and thus is problematic from a legal perspective. Additionally, a significant fact that was heard by the commission from both the LAA and representatives of industry, is that the LAA's proposal would likely **triple** the taxable value of cavern wells and thus triple the *ad valorem* tax liability of the owners of cavern wells.

The commission heard presentations from both industry representatives and the LAA and has taken the LAA's proposal under advisement. The written submissions of the LAA and industry can be found on the commission's website (www.latax.state.la.us) under "Rules and Regulations." The commission will announce and adopt its rules and regulations for tax year 2014 on September 18, 2013. ●