

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0421

CHRISTIAN MINISTERS MISSIONARY BAPTIST ASSOCIATION  
OF PLAQUEMINES PARISH, INC.,  
LOUISIANA ENVIRONMENTAL ACTION NETWORK, SIERRA CLUB,  
JOYCE CORNIN, AND VELMA DAVIS

VERSUS

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Judgment Rendered: DEC 10 2014

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA  
DOCKET NUMBER C615595, SECTION 25

HONORABLE WILSON E. FIELDS, JUDGE

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**BEFORE: PARRO, McDONALD, AND CRAIN, JJ.**

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**McDONALD, J.**

This appeal challenges the district court's dismissal of a petition for judicial review of a permit action taken by the Louisiana Department of Environmental Quality (LDEQ), pursuant to an exception of lack of subject matter jurisdiction. For the following reasons, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

The plaintiffs, Christian Ministers Missionary Baptist Association of Plaquemines Parish, Inc. (an organization representing the interests of members of the communities the ministers serve in Plaquemines Parish), Louisiana Environmental Action Network (LEAN, a statewide network of member groups and individual members, domiciled in East Baton Rouge Parish), Sierra Club, Joyce Cornin, and Velma Davis (both residents of Ironton, Louisiana), filed this appeal contesting the dismissal of their petition for judicial review, which challenged the issuance of a minor source air permit to Ram Terminals, L.L.C., for its bulk coal handling and storage facility located on Highway 23 in the community of Ironton, in Plaquemines Parish.

On May 31, 2012, RAM Terminals applied to LDEQ for an air permit for the proposed RAM Coal Terminal to be located in Ironton. On July 9, 2012, following expedited review, LDEQ approved permit number 2240-00421-00, granting Ram Terminals' minor source air permit for its proposed coal terminal.

On September 25, 2012, the plaintiffs filed a petition for judicial review, asserting that the minor source air permit granted to Ram Terminals created unacceptable risks to the communities in the vicinity of the facility and posed unacceptable dangers to the planned Myrtle Grove Diversion, a freshwater diversion designed to address critical ecological needs of the central Barataria Basin by restoring parts of Louisiana's disappearing coastal wetlands.

The plaintiffs raised four assignments of error, essentially contending that

LDEQ violated its public trustee duty in issuing the permit by failing to perform an environmental assessment prior to issuing the permit. Plaintiffs also requested a stay of the effectiveness of the permit, pending resolution of the judicial review proceeding. The motion to stay was denied.

LDEQ filed a motion to dismiss the petition for judicial review, asserting that it was not required to publish a public notice prior to taking final action on the application for a minor source air permit pursuant to LAC 33:III.519.A.4 and C.1 of LDEQ's air regulations. Further, LDEQ asserted that, in accordance with La. R.S. 30:2050.21, a petition for judicial review must be filed with the court within thirty days of notice of the action, and the plaintiffs' petition for review was filed more than thirty days after the notice of the issuance of the permit was given to RAM Terminals. The motion to dismiss was set for a hearing.

Thereafter, LDEQ filed a declinatory exception raising the objection of lack of subject matter jurisdiction and/or a peremptory exception of no cause of action and/or alternatively, a motion to dismiss the petition for judicial review. LDEQ asserted that plaintiffs were seeking judicial review of a minor source permit action, although they failed to raise issues and provide information to LDEQ prior to LDEQ's permit decision. LDEQ maintained that La. R.S. 30:2050.21, in conjunction with La. R.S. 30:2050.23, did not provide the court with subject matter jurisdiction to review a permit decision for which the petitioner did not submit comments. Further, LDEQ asserted that plaintiffs had not stated a cause of action for which relief could be granted, as plaintiffs sought judicial review solely on the issue of whether LDEQ should have issued an "IT Analysis" with the permit decision, and an "IT Analysis" was not required for uncontested permit actions, citing **In re Rubicon, Inc.**, 95-0108 (La. App. 1 Cir. 2/14/96), 670 So.2d 475. LDEQ asked that the petition for judicial review be dismissed.

Following the filing of opposition and reply memoranda to the exceptions,

the district court held a hearing on LDEQ's exceptions. The district court granted LDEQ's declinatory exception raising the objection of lack of subject matter jurisdiction and dismissed the petition for judicial review with prejudice. The judgment was signed on January 2, 2014. The plaintiffs appeal that judgment.

### DISCUSSION

A court's power to grant relief is premised upon its subject matter jurisdiction over the case or controversy before it, which cannot be waived or conferred by consent. The district courts have exclusive original jurisdiction over most matters, and concurrent original jurisdiction with trial courts of limited jurisdiction. *See* La. Const. art. V. § 16. Subject matter jurisdiction is a threshold issue, insofar as a judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. *See* La. C.C.P. art. 3; **Citizens Against Multi-Chem v. Louisiana Dept. of Environmental Quality**, 2013-1416 (La. App. 1 Cir. 5/22/14), 145 So.3d 471, 474, writ denied, 2014-1464 (La. 10/10/14), So.3d  , 2014 WL 5315024.

The objection of lack of subject matter jurisdiction is used to question the court's legal power and authority to hear and determine a particular class of actions or proceedings based upon the object of the demand, the amount in dispute, or the value of the legal right asserted. *See* La. C.C.P. art. 2. The objection of lack of subject matter jurisdiction may apply in district courts when there are special jurisdictional provisions for administrative agency determinations. *See* La. Const. art. V § 16(A); La. R.S. 23:1310.3; **Citizens Against Multi-Chem**, 145 So. 3d at 474-75.

Subject matter jurisdiction cannot be waived by the parties, and the lack thereof can be recognized by the court at any time, with or without a formal exception. *See* La. C.C.P. arts. 3 and 925(A)(6). A declinatory exception pleaded before or in the answer must be tried and decided in advance of the trial of the

case. La. C.C.P. art. 929(A). At the trial of a declinatory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition. La. C.C.P. art. 930; **Citizens Against Multi-Chem**, 145 So.3d at 475.

District courts are granted appellate jurisdiction to review administrative decisions only as provided by the legislature or the constitution. Thus, a threshold issue is whether the district court had subject matter jurisdiction over the plaintiffs' appeal of LDEQ's permit grant. If the district court lacked jurisdiction to adjudicate the appeal, this court also lacks jurisdiction, save to correct the error of the lower court in entertaining the appeal. **Citizens Against Multi-Chem**, 145 So.3d at 475.

Louisiana Revised Statute 30:2050.21 provides, in pertinent part:

A. An aggrieved person may appeal devolutively a final permit action, a final enforcement action, or a declaratory ruling only to the Nineteenth Judicial District Court. A petition for review must be filed in the district court within thirty days after notice of the action or ruling being appealed has been given. The district court shall grant the petition for review.

Louisiana Revised Statute 30:2050.23 provides in part:

A. (1) Notice to an applicant for a permit, a respondent, a petitioner for a declaratory ruling, or a party to an adjudicatory hearing shall be given by certified mail return receipt requested.

(2) Notice to other persons shall be given by ordinary mail.

(3) In all cases, notice may be given by delivery.

B. When a party is represented by an attorney or has appointed an agent for service of process, notice may be given to the attorney or the agent.

C. (1) Notice to an applicant for a permit, a respondent who is a party, an intervenor, a petitioner for a declaratory ruling, or a person who submits a written comment shall be given at the address in the application, the request for a hearing, the request for an intervention, the petition, or the comment.

This court, in **In Re Natural Resources Recovery, Inc.**, 98-2917 (La. App. 1 Cir. 2/18/00), 752 So.2d 369, 375, writs denied, 2000-0806 and 0836 (La. 5/26/00), 762 So.2d 1104 and 1105, construed La. R.S. 30:2050.21 and La. R.S. 30:2050.23 together, and concluded that LDEQ was statutorily required to notify those persons specifically listed in La. R.S. 30:2050.23 of its decisions. Those persons specifically mentioned in the notice provision include: (1) an applicant for a permit; (2) a respondent who is a party; (3) an intervenor; (4) a petitioner for a declaratory ruling; (5) a party to an adjudicatory hearing; and (6) a person who submits a written comment.

Plaintiffs assert that LDEQ did not give notice of its final permit decision to the plaintiffs, or to any aggrieved persons. Thus, they conclude, LDEQ never triggered the thirty-day delay provided by La. R.S. 30:2050.21(A).

LDEQ maintains that the plaintiffs do not fit any of the categories of persons that they were required to notify. LDEQ further avers that, the reasoning of the plaintiffs that they qualify as aggrieved persons under La. R.S. 30:2050.21, despite not submitting comments on the permit prior to its issuance, makes them immune to the appeal delays that apply to actual aggrieved persons under the statute. In other words, LDEQ avers that to follow the arguments of the plaintiffs, persons who submit comments and are entitled to receive notice would have only thirty days from mailing of notice to file an appeal, while those who failed to participate in the application review process would be free to bring an appeal at any time.

LDEQ maintains that it complied with all the notice requirements legally required, as, subsequent to the receipt of RAM Terminals' permit application, LDEQ notified, in writing, the Plaquemines Parish Police Jury and all public interest groups and individuals who had requested notice and provided a mailing address. Further, LDEQ states that it posted information regarding the receipt of the application on its website. LDEQ maintains that plaintiffs could have

requested notice of permit applications in Plaquemines Parish, perused LDEQ's website to ascertain what applications were under review, or submitted their concerns with the RAM Terminals facility at any point during the permit application review process.

We note that because RAM Terminals' application is for a minor source air permit, the regulations do not require that the proposed permit be noticed or that a public comment period be held. The decision to do so rests within the sound discretion of LDEQ. *See* LAC 33:III.531.A.1. In this exercise of discretion, LDEQ is entitled to deference by the court. *See In the Matter of Recovery I*, 93-0441 (La. App. 1 Cir. 4/8/94), 635 So.2d 690, 696, writ denied, 94-1232 (La. 7/1/94), 639 So.2d 1169.

We find that, as in the **Citizens Against Multi-Chem** case, the plaintiffs in this case, although they did not participate in the application review process, would have this court declare that their failure to participate in the process allows the legally mandated appeal delays to fall by the wayside, so that plaintiffs may remain free to bring an appeal at any time. The statutes and law do not envision an unlimited amount of time in which to appeal the grant of a permit. **Citizens Against Multi-Chem**, 145 So.3d at 477.

The district court found that a petition for judicial review had to be filed within thirty days from the notice, and as it was not filed within the thirty-day period, the district court had no jurisdiction over the petition for judicial review. We agree.<sup>1</sup>

For the foregoing reasons, the district court judgment dismissing the petition

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<sup>1</sup> In brief, LDEQ argues that plaintiffs failed to state a cause of action in their petition for judicial review. Based on the foregoing opinion, because we agree with the district court that it has no subject matter jurisdiction over plaintiffs' petition for judicial review, we pretermitt any discussion of LDEQ's arguments regarding plaintiffs' alleged failure to state a cause of action.

for judicial review is affirmed. Costs are assessed against Christian Ministers Missionary Baptist Association of Plaquemines Parish, Inc., Louisiana Environmental Action Network, Sierra Club, Joyce Cornin, and Velma Davis.

**AFFIRMED.**