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Common-Law Contamination Action/Oil and Gas Production: Was Landowner Required to Exhaust Administrative Remedies Before Mississippi Oil and Gas Board?

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The United States District Court (Mississippi-Western Division) (“Court”) issued a February 16th Memorandum Opinion and Order (“Opinion”) addressing whether a landowner’s common-law contamination claim related to oil and gas production activities should have been first submitted to the Mississippi Oil and Gas Board (“Board”). See 2018 WL 934827.

The Court stayed the landowner’s common-law contamination claim pending exhaustion of administrative remedies before the Board.

The Opinion states that Plaintiff David Miller (“Plaintiff”) owns approximately 500 acres of real property in Pike County, Mississippi. Defendant Mississippi Resources (“Defendant”) is stated to be conducting oil, gas, and mineral production activities on at least some of Plaintiff’s property.

The Plaintiff landowner filed an action against Defendant in Pike County, Mississippi court alleging:

- Negligence
- Negligence per se
- Negligent infliction of emotional distress
- Punitive damages

Plaintiff alleged that Defendant’s “production activities” caused “extensive surface and subsurface contamination, saltwater contamination, oil and gas and other hydrocarbon contamination, and production waste contamination.”

After removing the case to federal court, Defendant moved to dismiss or stay the action on the ground that Plaintiff failed to exhaust administrative remedies pre-suit. Defendant contended that because the action included alleged contamination from oil and gas production activities, the claim should have been submitted to the Board. The Board’s jurisdiction includes oil and gas production activities.

Plaintiff responded that the action did not need to be presented to the Board because it lacks jurisdiction over saltwater-pipeline-based contamination (referencing “spill of saltwater mixed with soil”). Plaintiff further argued that such contamination is:

. . . not “production waste” subject to the Board’s jurisdiction, but instead a non-exempt hazardous waste under the Resource Conservation and Recovery Act of 1976. . .

The Opinion addresses the Board’s regulatory authority over the contamination alleged by Plaintiff. It states that because “the Board’s authority embraces the types of harm suffered by Miller, Miller must present his grievances to the Board before pursuing his common-law damages claims in this Court.”

The Court then considers whether exhaustion is required if the Plaintiff’s Complaint raises issues subject to regulation by the Board. It holds that exhaustion is a judge-made rule with judge-made exceptions. The analysis analyzes various factors and whether it should excuse the Plaintiff’s failure to exhaust. It concludes, based on certain of those factors, that exhaustion was required, noting:

The parties have not raised a dispositive legal issue. And far from futile, exhaustion would be useful if Miller’s property is indeed contaminated in the manner he alleges. The Board can ensure what Court-awarded money damages cannot – that the affected property is actually remediated. And finally, because Miller’s Complaint alleges production and exploration-related contamination, the dispute is more efficiently resolved by the Board than this Court.

The Court therefore decides to stay the action pending the Board’s resolution of the issues raised by the Plaintiff’s Complaint.

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