

# [***State Bayou Bridge Pipeline Permit Illegal, State Judge Rules***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:5SB0-DCY1-JDG9-Y08M-00000-00&context=1516831)

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**Body**

Lake Worth: Earth First has issued the following press release:

The state Department of Natural Resources violated provisions of a state law designed to protect the public and ***environment*** in issuing a coastal use permit for construction of the controversial Bayou Bridge Pipeline, and the permit must be reconsidered, according to a state district court judge in St. James Parish.

The state agency overseeing the pipeline permit eliminated state-required environmental and safety protections for neighborhoods in St. James Parish and coastal areas that the pipeline will pass through by improperly applying provisions of the state’s Coastal Zone Management Act, 23rd Judicial District Court Judge Alvin Turner Jr. ruled in his April 26 decision, made public Monday (May 7).

Turner also ordered DNR to require Bayou Bridge to develop emergency evacuation and response plans for areas the pipeline runs through before any permit is issued.

Elizabeth Livingston de Calderon, a supervising attorney with the Tulane Environmental Law Clinic representing environmental and community groups that filed suit challenging the permit, said the ruling will require construction to stop on the 162-mile pipeline until DNR reconsiders the permit, once a formal judgment is issued in the case, which could take another week or so.

Patrick Courreges, a spokesman for DNR, said the agency’s staff believed it was following the rules correctly under state law.

“The court has ruled otherwise,” he said, adding that no decision has been made on whether to accept the judge’s ruling remanding the permit for rehearing, or whether to appeal the decision to the state 5th Circuit Court of Appeal.

Bayou Bridge Pipeline is jointly owned by Energy Transfer Partners and Phillips 66. Its route runs from Lake Charles to St. James Parish, including a long segment that crosses the Atchafalaya River Basin.

“We do not typically comment on pending or current litigation,” said Energy Transfer Partners spokeswoman Vicki Granado. “We would like to reiterate, however, that we will continue to follow all of the stipulations of our permits, as we have always done.”

Two St. James residents among those filing the suit praised the ruling in a press release announcing the decision.

“It seems like the state agency didn’t think too much about the people who live here when it was giving Bayou Bridge this permit, and neither did Bayou Bridge,” said Harry Joseph Sr., pastor of Mount Triumph Baptist Church in St. James. “So we went to court, to somebody who we felt would listen to us, and he did.”

“Here in St. James, we are in desperate need for an evacuation plan that will allow us to get out fast when something spills or explodes,” said Genevieve Butler, a St. James resident. “More facilities keep coming, and each one puts us at more risk, but none of them want to do anything about our situation. Well, now Bayou Bridge has to step up. I hope all the others see this ruling as a sign that they have to give our community the protection we deserve.”

A separate federal lawsuit by environmental groups seeking to overturn an Army Corps of Engineers permit and halt construction in the basin resulted in a temporary restraining order blocking construction. But that order was itself blocked by a 3-judge panel of the U.S 5th Circuit Court of Appeals until an appeal of the federal judge’s ruling could be appealed. A hearing on that appeal by a separate 3-judge panel occurred last week, and no ruling has been issued by that panel.

At issue in Turner’s ruling are three guidelines governing permitting under the state’s Administrative Procedures Act, which governs how agencies make decisions under other laws, like the coastal zone act: 711(A), which governs rules dealing with commercial and industrial surface alterations; 719(K), which governs “oil, gas and mineral activity;” and 705, a less-stringent guideline applicable to “linear facilities.”

Turner said DNR decided against applying the surface alteration guideline because it felt the oil, gas and mineral activity guideline would apply. But then the agency decided that guideline also didn’t apply, which eliminated its justification for not using the surface alteration guideline, he said.

Instead, it used the less stringent linear facilities guideline, “thereby eliminating the increased protections which should have been afforded prior to issuing a permit to transport crude oil through the neighborhoods of St. James Parish and coastal areas.”

He said state law requires the use of one or more of the guidelines when it is appropriate to do so, and that failing to do so “without articulating any rational basis for doing so is arbitrary, capricious,” and in violation of state law.

Turner said that once the pipeline was completed, it would not result in surface alteration. “However, it cannot be disputed that once constructed, use of the pipeline could conceivably change the usability of the land.”

More troubling, he said, was the department’s failure to apply the guideline dealing with oil, gas and mineral activities, which ie said is defined as “those activities which are directly involved in the exploration, production and refining of oil, gas and other minerals.”

“It cannot be reasonably disputed that the transportation of crude oil is directly involved in the refining of oil,” Turner wrote. “Oncecrude oil is extracted it has to be transported via pipeline to a refinery, where it is thereafter converted to various refined oil products.”

At a minimum, he said, that guideline should have been considered in determining whether to grant the permit.

Turner declined to rule on a state constitution argument raised by the groups opposing the permit: that DNR violated its public trust duty by not requiring an emergency response plan or considering potential adverse impacts.

But in ordering DNR to reconsider the permit, he ordered the agency to require Bayou Bridge Pipeline LLC “to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster “PRIOR to the continued issuance of said permit.”

The ruling follows a Jan. 4 hearing by Turner on the suit challenging the state permit filed in May 2017 by attorneys with the Tulane Environmental Law Clinic on behalf of Joseph; Butler, a resident of the community; the Humanitarian Enterprise of Loving People (HELP), an organization of pastors and residents on the west bank of St. James Parish; the Gulf Restoration Network; Atchafalaya Basinkeeper, an environmental organization focusing on the river basin; and Louisiana Rise, formerly Bold Louisiana, an environmental group opposing the pipeline.

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