

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

**MAY 17 2011**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

JAMES W. McCORMACK, CLERK  
By: SDA **DEP CLERK**

PEGGY GINARDI, IKE LESTER  
and CONSTANCE LESTER,

Plaintiffs,

vs.

No. 4-11-CV-0420 BRW  
COMPLAINT - CLASS ACTION

Frontier Gas Services, LLC.,  
Kinder Morgan Treating, LP,  
Chesapeake Energy Corporation,  
and BHP Billiton Petroleum  
(Fayetteville), LLC.,

This case assigned to District Judge Wilson  
and to Magistrate Judge Keurmey

Defendants.

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**COMPLAINT**

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COME NOW the Plaintiffs, for themselves and on behalf of all similarly situated persons, and for cause of action against the Defendants, state as follows:

**INTRODUCTION**

This class action lawsuit is filed on behalf of the named Plaintiffs, Peggy Ginardi, Ike Lester and Constance Lester, and all those citizens and/or residents and/or property owners of the State of Arkansas who live and/or own property within a one (1) mile radius of any natural gas compressor and or transmission station, hereinafter referred to as *Compressor Stations*, being operated by the Defendants within the State of Arkansas. The Plaintiffs herein live and/or own

property adjacent to the Defendants' *Compressor Station*, as shown on Exhibit "A" attached hereto.

This action is being brought against the Defendants for the creation of a noxious and harmful nuisance; contamination; trespass and diminution of property values that the *Compressor Stations* have caused.

This action seeks, among other relief, injunctive relief in the form of monitoring of air quality on Plaintiffs property, to enable the named Plaintiffs, and the other Arkansans who are located within the defined area, to have their property monitored for the harmful effects of the *Compressor Stations* owned and operated by the Defendants.

### **JURISDICTION AND VENUE**

1. Plaintiff Peggy Ginardi is an adult resident citizen of Faulkner County, Arkansas, residing at 360 West Republican in Faulkner County, Arkansas.
2. Plaintiffs Ike and Constance Lester, are adult resident citizens of Faulkner County, Arkansas, in a home located on property at 362 West Republican in Faulker County, Arkansas.
3. Defendant Frontier Gas Services, LLC. is a Delaware corporation with its principal place of business in Tulsa, Oklahoma and at all times relevant hereto, Frontier Gas Services, LLC. was and continues to be engaged in the creation and operation of *Compressor Stations* in and about the State of Arkansas

either directly or through its agents and /or apparent agents. The Defendant is responsible, either directly or through its agents and/or apparent agents, for the creation and operation of the Compressor Stations located in the vicinity of the Plaintiffs' properties. Defendant has done, and continues to do, business in the State of Arkansas, and likewise has sufficient minimum contacts with Arkansas. Service may be had upon Defendant Frontier Gas Services by serving a copy of the summons and complaint to:

Frontier Gas Services, LLC.  
c/o The Corporation Company  
124 West Capitol Avenue, Suite 1900  
Little Rock, Arkansas 72201

4. Defendant Kinder Morgan Treating, LP is a Delaware corporation with its principal place of business in Houston, Texas and at all times relevant hereto, Kinder Morgan Treating, LP. was and continues to be engaged in the creation and operation of Compressor Stations in and about the State of Arkansas either directly or through its agents and/or apparent agents. The Defendant is responsible, either directly or through its agents and/or apparent agents, for the creation and operation of the Compressor Stations located in the vicinity of the Plaintiffs' properties. Defendant has done, and continues to do, business in the State of Arkansas, and likewise has sufficient minimum contacts with Arkansas. Service may be had upon Defendant Kinder Morgan Treating, LP. by serving a

copy of the summons and complaint to:

Kinder Morgan Treating, LP.  
c/o The Corporation Company  
124 West Capitol Avenue, Suite 1900  
Little Rock, Arkansas 72201

5. Defendant, Chesapeake Energy Corporation, is a Oklahoma corporation with its principal place of business in Oklahoma City, Oklahoma. At all times relevant hereto, Chesapeake Energy Corporation, was and continues to be engaged in the creation and operation of *Gas Wells* in and about the State of Arkansas. The Defendant is responsible, either directly or through its agents and/or apparent agents, for the creation and operation of *Gas Wells* located in the vicinity of Plaintiffs' property. Defendant Chesapeake Energy Corporation has done, and continues to do, business in the State of Arkansas, and has committed a tort, in whole or in part, in the State of Arkansas, and likewise has sufficient minimum contacts with Arkansas. Service may be had upon Defendant Chesapeake Energy Corporation, by serving a copy of the summons and complaint to:

Chesapeake Energy Corporation  
c/o The Corporation Company  
124 West Capitol Ave., Suite 1900  
Little Rock, AR 72201

6. Defendant BHP Billiton Petroleum (Fayetteville), LLC. is a

Delaware corporation with its principal place of business in Houston, Texas. At all times relevant hereto, BHP Billiton Petroleum (Fayetteville), LLC. was and continues to be engaged in the creation and operation of *Gas Wells* in and about the State of Arkansas. The Defendant is responsible, either directly or through its agents and/or apparent agents, for the creation and operation of *Gas Wells* located in the vicinity of Plaintiffs' property. Defendant BHP Billiton Petroleum (Fayetteville), LLC. has done, and continues to do, business in the State of Arkansas, and has committed a tort, in whole or in part, in the State of Arkansas, and likewise has sufficient minimum contacts with Arkansas. Service may be had upon Defendant, BHP Billiton Petroleum (Fayetteville), LLC. by serving a copy of the summons and complaint to:

BHP Billiton Petroleum (Fayetteville), LLC.  
c/o The Corporation Company  
124 West Capitol Ave., Suite 1900  
Little Rock, AR 72201

7. Plaintiffs' causes of action arise in the State of Arkansas as a direct result of the tortious conduct of the Defendants. These causes of action are for past, present and ongoing, continuing torts which remain unabated.

8. The Court has jurisdiction over this action under 28 U.S.C. §1332(a)(1) because the Plaintiffs, and the Defendants, are citizens of different

states and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

9. The actions complained of herein occurred in the Eastern District of Arkansas and venue is proper in this Court.

10. Plaintiffs specifically allege that valid service of process has been issued and properly served upon the Defendants herein.

11. Plaintiffs specifically allege that the Defendants herein cannot identify any individual or legal entity who is not a party to this action, who caused or contributed to the injuries and damages for which the Plaintiffs seek recovery herein.

12. The Defendants are being sued individually, and under the Doctrine of Respondeat Superior, for the actions and/or inactions of their agents, apparent agents, servants and/or employees.

#### FACTS

13. The Plaintiff, Peggy Ginardi resides on a four acre parcel of land located at 360 West Republican in Faulkner County, Arkansas. She and her husband bought the property in 1984 and she has resided there since then.

14. Plaintiffs Ike and Constance Lester reside in a home which is situated on the four acre parcel of land owned by Peggy Ginardi at 360 West Republican.

15. The Defendants herein are involved in the gathering, treatment, compression and transportation of shale gas which is being produced through hydraulic fracturing of the Fayetteville Shale, a rock formation located in central Arkansas.

16. The *Compressor Stations* operated by the Defendants are located throughout the State of Arkansas, having proliferated as a result of the need to gather and transport the shale gas which is produced through the fracturing process.

17. *Compressor Stations* are large industrial developments placed at specific distances along natural gas transmission pipelines. At those stations, the natural gas is gathered or accumulated, treated and then recompressed to insure that it continues to flow along the transmission pipeline.

18. *Compressor Stations* are made up of compressor units, which are huge engines which typically use turbines to compress the natural gas, along with filter/dehydration units which remove impurities from the gas.

19. The entire process of purifying, compressing and transmitting shale gas through gas transmission pipelines constitutes an industrial development, which is incompatible with residential living. The compression devices are extremely loud and produce injurious levels of noise. This noise is of such a harmful nature that it makes properties within a one mile radius of the *Compressor*

*Station* itself a danger to inhabit.

20. The *Compressor Stations* also emit large amounts of methane and hydrogen sulfide as well as other flammable and noxious gases which vent into the air surrounding the *Compressor Station* facilities. The danger posed by these gases is so great, *Compressor Station* operators are required to place wind socks on their property to alert employees to the direction these noxious gases are traveling so they can avoid contact with those gases.

21. The Defendants have constructed a huge *Compressor Station* facility on a parcel of land which adjoins the residential property owned by the Plaintiffs Ginardi and Lester. Exhibit "A" to this complaint shows an areal view of the Plaintiff's property in relation to the Defendants *Compressor Station* facility. These Defendants continue to operate the *Compressor Station* facility and as a result of said operation have caused excessive industrial noise pollution of Plaintiffs residential property.

22. Defendants' *Compressor Station* operations involve eight (8) massive compressor units, along with dehydration/purification equipment and flare pipes. The *Compressor Station* operation continues to emit methane and hydrogen sulfide as well as other flammable and noxious gases which regularly flow into and about the residential property owned by the Plaintiffs.

23. The activities of the Defendants were performed knowingly, wantonly



and with reckless disregard for the rights and safety of the Plaintiffs and other persons similarly situated.

24. As a result of the Defendants activities, property within the described radius around each *Compressor Station* has been affected in one or more of the following ways:

- a. Pollution and/or contamination of the air and atmosphere with harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds;
- b. Pollution and/or contamination of the groundwater with harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds;
- c. Pollution and/or contamination of the soil with harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable chemicals and compounds;
- d. Incessant and constant noise pollution from the constant operation of the gigantic compressor units, resulting in a continuous and harmful trespass, nuisance and annoyance.

## CAUSES OF ACTION

### STRICT LIABILITY

25. The Plaintiffs repeat and reallege the allegations of paragraphs "1" through "24" of this Complaint, as if set forth in this paragraph at length.

26. The harmful noise pollution as well as the hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable chemicals and compounds resulting from the Defendants *Compressor Station* operation are of a toxic and hazardous nature capable of causing severe personal injuries and damages to persons and property, and are therefore ultra hazardous and abnormally dangerous.

27. The harmful noise pollution as well as the hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds resulting from the Defendants *Compressor Station* operation are of a toxic and hazardous nature capable of causing severe personal injuries and damages to persons and property, regardless of the degree of caution exercised by the Defendants.

28. The Defendants' activities created an unacceptable risk of harm to the Plaintiffs and their property, along with all other persons and property similarly situated.

29. The Defendants, by engaging in abnormally dangerous and ultra hazardous activities, are strictly liable without regard to fault for all the damages

and injuries to the Plaintiffs proximately caused by their operation of *Compressor Stations*.

### NUISANCE

30. The Defendants' *Compressor Stations* unreasonably interfered, and continues to interfere, with the safe use and enjoyment of adjoining and nearby lands and thus disturbs the peaceful, quiet and undisturbed use and enjoyment of such property.

### TRESPASS

31. The Defendants *Compressor Stations* trespassed on the land of the Plaintiffs, and all others similarly situated, through the migration and accumulation of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds upon and under the land.

32. The Defendants trespasses have resulted in physical damage to the property of the Plaintiffs, and all others similarly situated, thereby causing injury to the right of possession of such property.

### NEGLIGENCE

33. The Defendants owed a duty of care to the Plaintiffs to responsibly engage in gas compression and transmission activities in the vicinity of the Plaintiffs' residences.

34. The Defendants had a duty to take all measures reasonably necessary to inform and protect the Plaintiffs from the dangers which accompanied the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable chemicals and compounds due to the operations of the Defendants.

35. The Defendants, including their agents, apparent agents, servants and/or employees, knew or in the exercise of reasonable care should have known, that their operations were resulting in a migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable chemicals and compounds.

36. The Defendants, including their agents, apparent agents, servants and/or employees, knew or in the exercise of reasonable care should have known, that the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds exposed the Plaintiffs and their property to a risk of pollution and/or contamination of their property.

37. The Defendants, including their agents, apparent agents, servants and/or employees, should have taken reasonable precautions and measures to prevent or mitigate a migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and

compounds, including adequate planning as well as notification systems and emergency preparedness plans.

38. The Defendants, including their agents, apparent agents, servants and/or employees, knew or in the exercise of reasonable care should have known, that once migrations occurred, they should have warned the Plaintiffs.

39. The Defendants, including their agents, apparent agents, servants and/or employees, knew or in the exercise of reasonable care should have known, that the harm caused to the Plaintiffs and their property was a foreseeable and inevitable consequence of the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds due to the Defendants operations.

40. The Defendants including their agents, apparent agents, servants and/or employees, acted unreasonably and negligently in causing the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds, and failed to take reasonable measures and precautions necessary to avoid the damage that was sustained by the Plaintiffs and their property.

41. The Defendants activities are of an industrial nature and cause incessant and constant noise which is so loud as to be harmful to Plaintiffs' hearing and which completely disturb the Plaintiffs ability to inhabit their homes

and property.

42. The Defendants acts and/or omissions mentioned herein were the direct and proximate cause of the damages sustained by the Plaintiffs and their property.

43. Some or all of the acts and/or omissions of the Defendants were grossly, recklessly and wantonly negligent, and were done with utter disregard for the consequences to the Plaintiffs, and therefore the Plaintiffs are entitled to an award of punitive damages.

44. The Plaintiffs in no way caused or contributed to the damages they have sustained.

### **CLASS ACTION**

45. The Plaintiffs repeat and reallege the allegations of paragraphs "1" through "44" of this Complaint, as if set forth in this paragraph at length.

46. The Plaintiffs bring this action for themselves and on behalf of a class of other similarly situated persons consisting of the following:

All citizens and/or residents and/or property owners of the State of Arkansas who live and/or own property within a one (1) mile radius of a *Compressor Station* operated by the Defendants.

47. The Plaintiffs are members of the class that they seek to represent.

48. The class is so numerous that joinder of all members is impracticable.

49. There are questions of law and fact which are common to the class, including but not limited to:

- a. Whether the Defendants activities caused a migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds;
- b. Whether the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds caused pollution or contamination of the soil of the class members;
- c. Whether the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds caused pollution or contamination of the property of the class members;
- d. Whether the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases chemicals and compounds caused pollution or contamination of the air and atmosphere of the class members;
- e. Whether the *Compressor Stations* operated by the Defendants

as so loud as to constitute a dangerous nuisance to persons living in the vicinity of the compressor stations.

- f. Whether the Defendants activities constitute a nuisance;
- g. Whether the Defendants are strictly liable for their actions and/or inactions;
- h. Whether the Defendants activities were negligently performed;
- i. Whether the Defendants activities caused a trespass upon the land of the class members;

50. The claims of the representative parties are typical of the class members because the action arises from the same common wrongs against the members of the class.

51. The Defendants have acted on grounds generally applicable to the class making appropriate injunctive relief with respect to the class as a whole. Monitoring, as described previously, is necessary because of the severe and irreparable harm which the migration of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases and chemicals creates upon the property of the Plaintiffs and all other class members.

52. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members because preliminary, overarching issues common to all class members predominate over



the individual issues.

53. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because class certification is a more efficient way to handle the case, the class is manageable and class certification will avoid a multiplicity of individual actions.

54. The Plaintiffs will fairly and adequately represent and protect the interests of the class.

### **INJURIES AND DAMAGES**

55. The Plaintiffs repeat and reallege the allegations of paragraphs "1" through "52" of this Complaint, as if set forth in this paragraph at length.

56. As a direct and proximate result of the unlawful activities of the Defendants, the Plaintiffs, and all others similarly situated, have suffered the following losses and damages:

- a. Loss of use and enjoyment of their property;
- b. Contamination of their soil;
- c. Contamination of their groundwater;
- d. Contamination of their air and atmosphere;
- e. Severe diminution in value of their property;
- f. Severe mental distress

## RELIEF SOUGHT

WHEREFORE, PREMISES CONSIDERED, the Plaintiff Peggy Ginardi sues the Defendants herein, jointly and severally as follows:

A. Compensatory damages for the injuries enumerated above in the amount of \$1,000,000.00 (**One Million Dollars**).

B. Punitive Damages in the amount of \$5,000,000.00 (**Five Million Dollars**).

The Plaintiffs Ike and Constance Lester sue the Defendants herein, jointly and severally as follows:

A. Compensatory damages for the injuries enumerated above in the amount of \$1,000,000.00 (**One Million Dollars**).

B. Punitive Damages in the amount of \$5,000,000.00 (**Five Million Dollars**).

Plaintiffs further pray for:

- a. Certification of a class as requested;
- b. Judgments for compensatory damages for all class members in an amount commensurate with the damages as set forth above;
- c. Judgments for punitive damages for all class members in an amount commensurate with the damages as set forth above;
- d. Establishment of a monitoring fund to pay for monitoring of

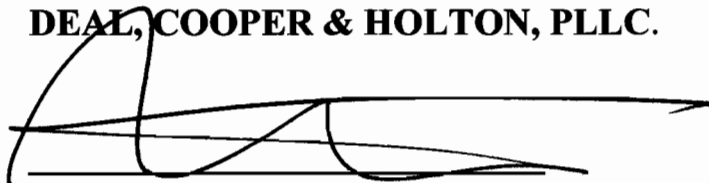
air, soil, groundwater, and atmosphere for the presence of harmful and/or hazardous and/or caustic and/or carcinogenic and/or poisonous and/or flammable gases, chemicals and compounds;

- e. An award of the costs of litigating the case;
- f. An award of attorney fees;
- g. An award of pre-judgment interest;
- h. All other relief to which the Plaintiffs and members of the class may be entitled.

**PLAINTIFFS RESPECTFULLY REQUESTS A TRIAL BY JURY.**

Respectfully submitted,

**DEAL, COOPER & HOLTON, PLLC.**



Timothy R. Holton (2001101)

Berry Cooper

John R. Holton (2009056)

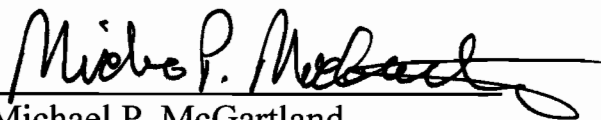
296 Washington Ave.

Memphis, TN 38103

(901)523-2222

and

**MCGARTLAND AND BORCHARDT**

A handwritten signature in black ink, appearing to read "Michael P. McGartland", with a long horizontal flourish extending to the right.

Michael P. McGartland  
1300 South University Drive  
Fort Worth, Texas  
817-332-9300

