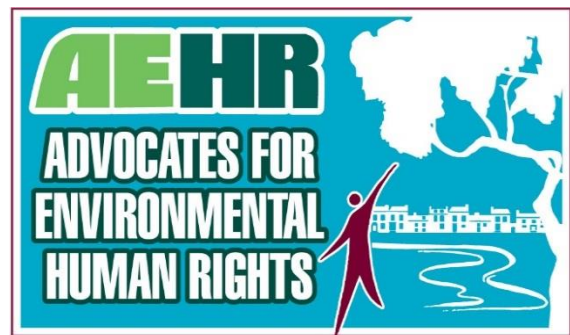


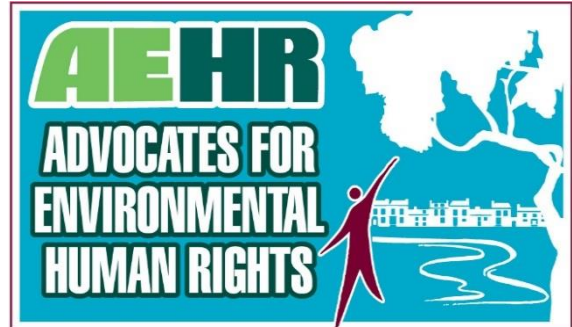
Stopping Land Theft in Mossville, Louisiana by the SASOL Corporation & Governmental Authorities



December 2014



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Introduction

On December 5, 2012, Louisiana Governor Bobby Jindal announced an agreement to give SASOL, a South African corporation, an economic incentive package worth nearly a quarter of a billion dollars in exchange for SASOL building two industrial facilities in southwest Louisiana, near the historic African American community of Mossville.¹ Mossville residents did not learn of the agreement between the Governor and SASOL until it was reported by the local media.² Neither Governor Jindal nor SASOL CEO David Constable mentioned Mossville residents in their remarks or discussed their plans for acquiring homes and lots in Mossville.



This report examines the actions taken by SASOL and governmental authorities to acquire land in Mossville that leave Mossville property owners vulnerable to land theft and displacement. This report concludes with recommendations for ensuring fair treatment of Mossville property owners and renters as well as other Louisiana residents who may find themselves targeted for industrial land acquisition in the future.

Mossville's Fight for Environmental Justice & Human Rights

Mossville is an unincorporated community whose founders were emancipated from slavery prior to the Civil War. At the end of the Civil War, Mossville became a safe haven from racial hostilities for Black families who settled the area by building their homes and establishing a school, churches, and small businesses. Community elders have recalled their time as children enjoying the natural beauty of Mossville that sustained their families who grew fruits and vegetables, fished, and hunted. They also describe the changes that took place after the start of industrial development in the 1940s that polluted the air and water, caused fish kills, and contaminated the land in Mossville.

Today, the Mossville community is surrounded by several industrial facilities that include an oil refinery, a coal-fired power plant, and the largest concentration of vinyl manufacturers in the United States. Mossville residents cope with declining health³ in

¹ Office of the Governor Bobby Jindal, *News Release: Governor Jindal and Sasol Announce Largest Manufacturing Investment in Louisiana History, Creating Over 7,000 Direct and Indirect Jobs*, Dec. 5, 2012, <http://gov.louisiana.gov/index.cfm?md=newsroom&tmp=detail&articleID=3758>.

² Eric Cormier, *Local Environmental Group Protests SASOL Decision*, THE AMERICAN PRESS (Lake Charles, LA) Dec. 5, 2012, <http://www.americanpress.com/Local-environmental-group-protests-Sasol-decision>.

³ Wilma Subra, *Health Report on Mossville, Calcasieu Parish, Louisiana*, May 25, 2009, <http://ehumanrights.org/docs/Mossville-Chemicals-and-Health-Report.pdf>.

the “kill zones”⁴ of at least seven industrial facilities, including SASOL’s existing specialty chemicals facility.⁵ The effect of federal, state, and local governments permitting the growth of hazardous industrial development in Mossville is the diminished ability of Mossville residents to protect their health, children, and community from toxic pollution and industrial accidents.

Mossville residents formed the organization Mossville Environmental Action Now, Inc. (“MEAN”) to fight for environmental justice and defend their human rights. On behalf of Mossville residents and MEAN, Advocates for Environmental Human Rights filed the first human rights case against environmental racism in the United States with the Inter-American Commission on Human Rights of the Organization of American States.⁶ MEAN has won other court battles against the U.S. Environmental Protection Agency (“EPA”) and the Louisiana Department of Environmental Quality (“LDEQ”), which have led to the EPA establishing air pollution limits on PVC facilities across the United States⁷ and the LDEQ revising an air permit to meet air quality standards.⁸

MEAN has also steered the U.S. Agency for Toxic Substances and Disease Registry (“ATSDR”) to conduct a dioxin exposure investigation in Mossville. Dioxins are the most dangerous chemical compounds known to science. This investigation revealed that Mossville residents on average have a level of dioxins that is three times higher than the national comparison group.⁹ In addition, the investigation showed that the dioxin compounds in Mossville residents’ blood are unique and different from the national comparison group.¹⁰ A follow-up ATSDR study in Mossville confirmed elevated dioxin levels in the fish from local waterways, fruits and nuts grown by Mossville residents, as well as their yard soil, and household and attic dust.¹¹ Scientists have linked these dioxins

⁴ “Kill zones” are areas where people will die in the event of a catastrophic industrial accident.

⁵ *Mossville Environmental Action Now v. United States of America*, Inter-American Commission on Human Rights, Case No. 12.755, Amended Petition, June 23, 2008, pp. 42-45, http://ehumanrights.org/docs/Mossville_Amended_Petition_and_Observations_on_US_2008.pdf.

⁶ Ike Sriskandarajah, *Human Rights in Cancer Alley*, Living on Earth/Public Radio International, Apr. 23, 2010, <http://www.loe.org/shows/segments.html?programID=10-P13-00017&segmentID=5>.

⁷ Lynn Peeples, *EPA Challenged by Louisiana Community over Weak Protections, Environmental Injustice*, THE HUFFINGTON POST, June 20, 2012, http://www.huffingtonpost.com/2012/06/20/-epa-louisiana-environmental-injustice_n_1611976.html.

⁸ See *Mossville Environmental Action Now v. Louisiana Department of Environmental Quality*, 19th Judicial District Court (East Baton Rouge, LA), Case No. 615303, Court Order, Nov. 14, 2014 (ordering the Louisiana Department of Environmental Quality to revise an air permit previously issued to the Georgia Gulf vinyl manufacturing facility to be in accordance with air quality laws and regulations).

⁹ *Industrial Sources of Dioxin Poisoning in Mossville, Louisiana: A Report Based on the Government’s Own Data*, p. 3, July 2007, available at: <http://www.ehumanrights.org/docs/REVISED%20MOSSVILLE%20REPORT%20%28WEB,%20FULL%29.pdf>.

¹⁰ *Id.*

¹¹ *Id. at p. 4.*

to the pollution released by Mossville-area industries.¹² Additional environmental investigations show that dioxins detected in the air in Mossville are at levels that can cause cancer¹³ and that the industrial facilities in Mossville have released pollution that is 100 times above ambient air quality standards.¹⁴

SASOL's Proposal to Convert Fracked Gas into Ethylene & Synthetic Fuel

SASOL is the acronym for South Africa Synthetic Oil Liquid. In 1948, the South African government enacted a system of racial apartheid and created SASOL in 1950 for the purpose of manufacturing synthetic oil from the domestic supply of coal and gas.¹⁵ SASOL copied the technology developed during the Nazi regime for converting coal to gas and using the gas to make synthetic fuels. For decades, the synthetic fuel produced by SASOL enabled the South African apartheid regime to withstand international condemnation and isolation via fuel embargos for its brutal violation of human rights. SASOL was privatized in 1979. SASOL remains a South African corporation that is traded on the Johannesburg Stock Exchange and, more recently, the New York Stock Exchange.

Less than one-quarter of a mile from the Mossville community, SASOL plans to manufacture the gas produced from hydraulic fracturing or "fracking" into synthetic oil liquid in the proposed gas-to-liquid or "GTL" facility and ethylene in the proposed ethane cracker facility. Both facilities are inherently hazardous and would release toxic pollution into the air, water, and land. The GTL facility would be the first of its kind in the United States. Presently, the only GTL facilities are located in South Africa, Qatar, and Malaysia, countries with poor records on human rights in modern history. SASOL has selected Mossville – a place where human rights violations are being reviewed by the Inter-American Commission on Human Rights – as the best choice for what would be the fourth GTL facility on the planet.

SASOL's plan to build and operate the proposed ethane cracker and gas-to-liquid facilities will exacerbate the pollution and industrial hazards already suffered by Mossville residents. With EPA's approval, the LDEQ issued environmental permits to SASOL that would allow the proposed facilities to release more than 10.678 million tons of air emissions on an annual basis. Because it is the first of its kind in the United States, the

¹² *Id.* at pp. 6-14. See also David Martin, *Toxic Towns: People of Mossville "Are Like an Experiment,"* CNN Special Report: Toxic America, Feb. 26, 2010, <http://www.cnn.com/2010/HEALTH/02/26/toxic.town.mosville.epa/index.html>.

¹³ See US Agency for Toxic Substances and Disease Registry, *Health Consultation: Ambient Air Evaluation of Polychlorinated Biphenyls and Dioxins, Calcasieu Parish, Louisiana*, July 9, 2013 (presenting results of air monitoring in Mossville that detected a concentration of dioxins that is 35.2% higher than the EPA's carcinogenic target risk for inhalation of dioxins and dioxin-like compounds).

¹⁴ US Environmental Protection Agency Region 6, *Report on TAGA Air Monitoring in Mossville, Calcasieu Parish, Louisiana*, June 1999.

¹⁵ Saul Dubow, *Apartheid 1948-1994*, Oxford University Press, 2014, p. 104.

GTL facility is permitted to operate under the miscellaneous provisions of the Clean Air Act.

Gov. Jindal's Risky Business with SASOL

In addition to state tax exemptions, Governor Jindal has given SASOL an economic incentive package worth \$257 million.¹⁶ At a time when Louisiana faces budget shortfalls, Governor Jindal is betting more than a quarter billion of state tax dollars that the cost of natural gas remains cheaper than oil for the next 15 years of revenues expected from SASOL's facilities. However, business and industry analysts have questioned the huge risk of building and operating a GTL facility in the United States at a time of falling oil prices. They recognize that the price of oil dropping below the price of natural gas reduces the energy market's demand for synthetic oil.¹⁷

The risk of economic loss is further underscored by Greg Albrecht, the Chief Economist of the Louisiana Legislature, who warned legislators that the revenues expected from SASOL's proposed facilities will be, at best, a wash for the state's economy because of the exorbitant tax breaks and economic incentives awarded to SASOL.¹⁸

Additional risks frequently excluded from the consideration of industrial tax breaks and incentives are the environmental and human health hazards posed by SASOL that would greatly exacerbate the racially disproportionate pollution burden in Mossville. A gas explosion and other hazardous incidents that can occur at the proposed SASOL facilities have the potential to overwhelm the inadequate infrastructure in the Mossville and Lake Charles area for emergency response and emergency medical care.

Louisiana Taxpayers to Give SASOL \$115 Million to Buy Land

The economic incentive package given to SASOL includes a \$115 million cash grant for the purchase of land and facility infrastructure. The terms for the cash grant are provided in the Cooperative Endeavor Agreement by and between the State of Louisiana

¹⁶ Louisiana Department of Economic Development, *Sasol Gas-to-liquids (GTL) and World-Scale Ethane-Cracker Complex: Estimated Tax Revenues and Incentive/Training Center Costs*, \$MM [n.d.].

¹⁷ See, e.g., Chris Pederson, *Sasol Clears Major Hurdle to Build America's First GTL Plant*, OILPRICE.COM, September 4, 2014, <http://oilprice.com/Energy/Natural-Gas/Sasol-Clears-Major-Hurdle-to-Build-Americas-First-GTL-Plant.html> (reporting that "the GTL community was reminded this week just how troubling building a GTL plant can be. Chevron Nigeria's 33,000 bpd plant came online this week and the numbers are not pretty. The project was completed nine years behind schedule. The initial estimate for the plant was \$1.7 billion, but in the end constructions costs totaled nearly \$10 billion. This hefty cost overrun and absurd production delay could make **Sasol think twice whether the time is right for the U.S. to become the next major GTL player**" [emphasis added]).

¹⁸ Julia O'Donoghue, *Legislature's Economist Is the Rare, Outspoken State Employee*, THE TIMES PICAYUNE (New Orleans, LA), http://www.nola.com/politics/index.ssf/2014/01/greg_albrecht_profile.html.

(represented by the Governor's Division of Administration), the Louisiana Department of Economic Development, and SASOL North America Inc. The Cooperative Endeavor Agreement has been in effect since December 1, 2012.

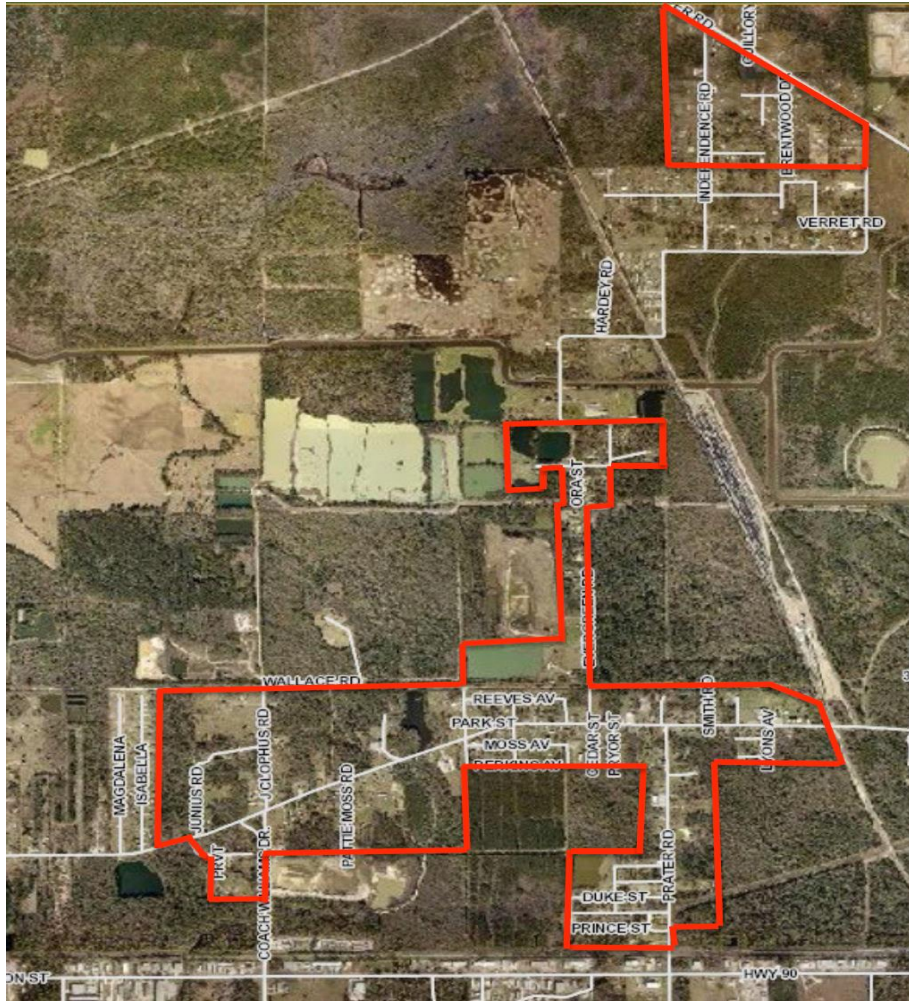
No Protections for Property Owners or Renters

Nowhere in the 41-page Cooperative Endeavor Agreement, which establishes the terms for providing SASOL with \$115 million of state tax dollars for acquiring land, buildings, and infrastructure, is there protection for property owners and renters who live and/or own property in the areas that SASOL wants to purchase. The omission of such protection makes Mossville property owners and renters vulnerable to unfair treatment by SASOL.

Since SASOL's announcement of its Voluntary Property Purchase Program in August 2013, MEAN has convened weekly community meetings to address residents' concerns. The group has frequently invited SASOL representatives to these meetings. Through this engagement, MEAN has compiled the following list of actions and inactions taken by SASOL that have made residents vulnerable to land theft by SASOL with the support of governmental authorities:

- developing the Voluntary Property Purchase Program without any input from property owners and renters in Mossville and the surrounding area, and reneging on the promise to hold dialogue sessions with residents to identify and address their relocation needs;
- calculating property purchase offers based on appraised "fair market value" which penalizes property owners for the devaluation of their property caused by decades of industrial pollution, waste, and contamination;
- rejecting replacement costs of homes, structures, and lots and the costs of moving and relocating as the basis for property purchase offers;
- rejecting compensation for the loss of heritage value by Mossville residents who are the descendants of the original founders and settlers of this historic community;
- refusing to provide proof that the maximum premium payment of 60% over the average appraised price is sufficient to address relocation needs;
- refusing to take receipt of written counteroffers made by Mossville residents when Louisiana law does not recognize verbal counteroffers;
- making purchase offers that have caused Mossville homeowners and renters to take on a new mortgage or endure other economic, environmental, cultural, or social hardships;
- failing to resolve issues with the Louisiana Road Home Program; and
- pressuring Mossville property owners and renters to accept SASOL's property purchase offers through actions taken by local governmental authorities at SASOL's request, which include a unanimous decision by the Port of Lake Charles to expropriate property in Mossville and surrounding areas; the unanimous vote by the Calcasieu Parish Police Jury to close roads and rezone areas in Mossville to

heavy industrial without any conditions that would support nearby residential use or take into consideration that the rezoning has caused a Mossville resident to become homeless; as well as members of the Police Jury chastising Mossville residents at a public meeting for not accepting whatever SASOL has offered them.



The outlined areas are Mossville to the south and the Brentwood neighborhood to the north that are subject to SASOL’s Voluntary Property Purchase Program (aerial map, page 8).

Does the Constitution Authorize the Funding of a Foreign Corporation to Buy Land and Expropriating Land at the Request of a Foreign Corporation?

As a party to the Cooperative Endeavor Agreement, SASOL North America Inc. is identified as a “Delaware corporation with its principal business offices in the State of Texas, authorized to do business in the State [of Louisiana].”¹⁹ In the resolution granting SASOL’s request to expropriate properties in Mossville and surrounding areas, the Board of Commissioners of the Lake Charles Harbor and Terminal District (also referred to as

¹⁹ Cooperative Endeavor Agreement by and between the State of Louisiana, Louisiana Department of Economic Development, and SASOL North America Inc., p. 1 and Section 3.02(A).

the Port of Lake Charles) identifies SASOL as “SASOL Chemicals (USA).”²⁰ Both identifications are incomplete and misleading. Neither SASOL North America Inc. nor SASOL Chemicals (USA) is an American corporation, but each one is a wholly-owned subsidiary of SASOL Ltd., a South African corporation. The December 3, 2012 news release by the Louisiana Department of Economic Development acknowledges that SASOL North America is a subsidiary of SASOL Ltd.²¹ More importantly, SASOL Ltd. reports that it owns and controls both SASOL North America and SASOL Chemicals (USA).²²

Recognition of SASOL as a foreign corporation has legal ramifications in the context of land acquisition. Article VI, Section 21 (B) of the Louisiana Constitution explicitly prohibits the government from selling to a foreign corporation any land that the government acquired via expropriation. This prohibition raises two related questions:

- (1) Does the State of Louisiana have the authority to circumvent this constitutional prohibition by avoiding the expropriation process and, instead, granting to SASOL, a foreign corporation, \$115 million for the purpose of buying land for industrial development?
- (2) Does the Port Authority of Lake Charles have the authority to expropriate land at the request of SASOL, a foreign corporation? If so, can the Port Authority of Lake Charles leave unanswered in its resolution how it intends to provide SASOL the use of the expropriated properties?

Given the clear constitutional prohibition against governmental authorities acquiring land and selling it to a foreign corporation, the Cooperative Endeavor Agreement approved by Governor Jindal and the Port of Lake Charles resolution should have accurately identified SASOL as a foreign corporation. The language used in these official documents falsely presents SASOL as an American company when it is not.

Stopping Land Theft in Industrial Land Acquisition

As discussed above, SASOL’s goal is to manufacture fracked gas into synthetic fuel and ethylene near Mossville, Louisiana. The South African corporation’s goal is premised on imprudent projections which did not foresee the falling price of oil and the growing bans on fracking²³ that are drying up the demand for synthetic oil. The steps taken to

²⁰ Lake Charles Harbor and Terminal District, Board of Commissioners Resolution 2014-056, November 17, 2014.

²¹ Louisiana Department of Economic Development, *News Release: Sasol Announces Largest Manufacturing Investment in Louisiana History, Creating More Than 7,000 Direct and Indirect Jobs*, Dec. 3, 2012, <http://www.opportunitylouisiana.com/index.cfm/newsroom/detail/220>.

²² See SASOL Ltd. organizational structure and list of subsidiaries as of October 31, 2014, <http://www.sasol.com/sites/default/files/content/files/Sasol%20Group%20organogram%20as%20at%2031%20October%202014.pdf>.

²³ See, e.g., Thomas Kaplan, *Citing Health Risks, Cuomo Bans Fracking in New York State*, THE NEW YORK

accomplish this goal involve ruthless strategies to acquire land, including land in Mossville. These strategies involve SASOL devaluing the land of Mossville property owners and renters and disregarding their valid concerns regarding unfair treatment. These strategies are supported by a Cooperative Endeavor Agreement approved by Governor Jindal that ignores any obligation of SASOL to ensure that Louisiana property owners and renters are truly afforded the means to a fair and just relocation. These strategies are further supported by zoning decisions by the Calcasieu Parish Police Jury that have a coercive effect as well as the plan for expropriation by the Port of Lake Charles. The cumulative effects of these actions deny the property rights of Mossville residents and residents in surrounding communities.

Land acquisition by the government, as authorized by the Constitution, requires public transparency, accountability, and safeguards that protect the property rights of individuals and accommodate all of their relocation needs. Presently, no person in Louisiana is guaranteed such protection with industrial land acquisition, and all persons are vulnerable to land theft by companies and governmental authorities.

Recommendations to the Louisiana State Legislature

- Convene joint legislative committee sessions to hear the testimony of residents aggrieved by the SASOL land acquisition in Mossville and surrounding communities.
- Support legislation to redress the unfair treatment that residents in Mossville and surrounding communities have been subjected to in the course of the SASOL land acquisition.
- Enact corrective legislation to set minimum requirements for industrial land acquisition that is funded or otherwise authorized by state and local governments, including port commissions, to protect the property rights of owners and tenants and accommodate all of the relocation needs of residents.

Recommendations to the Louisiana Attorney General

- Conduct an investigation into the SASOL land acquisition to determine whether Governor Jindal is authorized by federal or state laws, including Article VI, Section 21(B) of the Louisiana Constitution, to execute a Cooperative Endeavor Agreement on behalf of the State of Louisiana that fails to correctly identify SASOL as a foreign corporation and obligates the payment of \$115 million in state tax dollars to SASOL for the purchase of land.
- Conduct an investigation into the SASOL land acquisition to determine whether the Port of Lake Charles is authorized by federal or state laws, including Article

Times (New York, NY), December 17, 2014, http://www.nytimes.com/2014/12/18/nyregion/cuomo-to-ban-fracking-in-new-york-state-citing-health-risks.html?emc=edit_na_20141217&nid=69963977&r=0.

VI, Section 21(B) of the Louisiana Constitution, to pass a resolution that fails to correctly identify SASOL as a foreign corporation and commits the Port Authority to expropriating land at the request of SASOL for its proposed manufacturing facilities without any indication in the resolution as to what legal relationship SASOL will have to the expropriated land.

- Conduct an investigation into the Calcasieu Parish Police Jury to determine whether its decisions to rezone properties in Mossville to heavy industrial (1) had the effect of coercing Mossville residents and residents in surrounding communities to accept SASOL's property purchase offers; and (2) constituted an unlawful taking of properties in Mossville and surrounding communities in violation of the due process rights of property owners.

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<http://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=images&cd=&cad=rja&uact=8&ved=0CAcQjRw&url=http%3A%2F%2Fferinoswalt.blogspot.com%2F2011%2F09%2Fcommercial-photography-baton-rouge.html&ei=iyWVNIwac2h7CAyAc&bvm=bv.82001339,d.eXY&psig=AFQjCNFDIP8GuGgX4vRYGnm5VCMYyAsqLA&ust=1419263472078005>