

Title 43 NATURAL RESOURCES

Part I. Office of the Secretary

Subpart 2. Oilfield Site Restoration

Chapter 21. Administration

§2101. Memorandum of Understanding

A. The Oilfield Site Restoration Commission, created within the Department of Natural Resources, the secretary, and the assistant secretary for the office of conservation have been delegated certain authority for the administration of this Part by Act 404 of the 1993 Regular Session of the Louisiana Legislature. A memorandum of understanding shall be prepared and signed by each of these entities for the purpose of delineating and agreeing on the authority and function to be served by and between each of them for the administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21:471 (May 1995).

§2103. Oilfield Site Restoration Commission

A. The commission shall perform all duties and functions authorized or imposed upon it by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The commission shall further enter into a memorandum of understanding in which it assumes the responsibilities and delegates the authority to the secretary according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. The commission shall receive and administer the oilfield site restoration fund and the site-specific trust accounts within the fund, as provided by law, and is authorized to expend monies from the fund for its administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:397 (April 1995), repromulgated LR 21:471 (May 1995).

§2105. Office of the Secretary

A. The secretary shall perform all duties and functions authorized or imposed upon him by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The secretary shall further enter into a memorandum of understanding in which he assumes the responsibilities and delegation of

authority according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. The office of the secretary is authorized to expend a sum, not to exceed \$200,000 per annum, for the department's administration of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

§2107. Office of Conservation—Assistant Secretary

A. The assistant secretary shall perform all duties and functions authorized or imposed upon him by the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature. The assistant secretary shall further enter into a memorandum of understanding in which he assumes the responsibilities and delegation of authority according to the provisions of Act 404 of the 1993 Regular Session of the Louisiana Legislature.

B. After review of existing rules of the office of conservation, the assistant secretary, shall promulgate any additional rules necessary for implementation of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

Chapter 23. Oilfield Site Restoration Fund

§2301. Establishment of the Fund

A. The commission, upon approval of the secretary, may enter into one or more agreements with a private legal entity to receive and administer the "Oilfield Site Restoration Fund," which shall be an interest bearing trust fund.

B. The fund shall be and remain the property of the commission.

C. The monies in the fund shall be used solely for the purposes of this Part.

D. The secretary shall:

1. certify to the Secretary of the Department of Revenue and Taxation, the date on which the fund equals or exceeds the sum of \$10 million (hereinafter referred to as the cap); and

2. the fees as provided for in R.S. 30:87 shall not be collected after the first day of the second month following certification that the cap has been reached; and

3. the Secretary of the Department of Revenue and Taxation shall resume collection of the fees upon certification by the secretary that, based on expenditures or the commitment to expend monies, the fund has fallen below \$6 million;

4. site-specific trust account funds within the fund shall not be counted to determine the cap.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:471 (May 1995).

§2303. Assessment of Fees

A. Effective September 1, 1993, in order to establish the oilfield site restoration fund, the following fees shall be paid:

1. \$0.01 on each barrel of oil and condensate from producing wells. Production shall be determined based on severance tax collections on each well;

2. \$0.005 on each barrel of oil and condensate from incapable wells. Production shall be determined based on severance tax collections on each well;

3. \$0.0025 on each barrel of oil and condensate from stripper wells. Production shall be determined based on severance tax collections on each well;

4. \$0.002 per thousand cubic feet on gas. Production shall be determined based on severance tax collections on each well.

B. Effective July 1, 1995 the fee shall be increased by 5 percent annually, in each of the above categories, until such time as the fee has been increased by 100 percent per site after which no further increases shall occur.

C. The royalty and overriding royalty owners shall not bear the burden of the fees imposed hereinabove.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:472 (May 1995).

§2305. Site-Specific Trust Accounts; Accounting Method

A. Prior to the establishment of the first site-specific trust account on any oilfield site, where there

are one or more wells associated with a transfer of ownership interest, any party to the transfer may file an application with the secretary, on a form provided by the department, requesting approval of a site-specific trust account based on a site assessment estimate, for restoration of the site so transferred, in compliance with oilfield site restoration under LAC 43:XIX.101 et seq.

B. After a site-specific trust account has been established on any oilfield site, including one or more wells, any subsequent transfer of any interest in one or more wells included in the account shall be reported to the secretary, on a form provided by the department. The secretary shall review the reported transfer and determine whether any modifications or adjustments to the account shall be made. Once a site-specific trust account has been approved the secretary shall issue a letter of determination to the transferrer indicating that he shall be exempt from liability in accordance with this Part.

C. Upon application to the department, on a form provided by the department, by the seller and the purchaser of an oilfield site transferred prior to August 15, 1993, subject to agreement by the assistant secretary for the office of conservation, a site-specific trust account may be established, or, a prior established private trust account may be transferred to the oilfield site restoration fund. Any trust account being transferred shall be subject to review and may be modified to meet the requirements of these rules.

D. Once a site-specific trust account has been established the secretary may modify the funding requirements of the account at any time during the life of the oilfield site, upon recommendation of the commission, the assistant secretary, or upon his own determination, based upon changes in operation, site conditions, or trust account status. After approval and establishment of a site-specific trust account only the responsible party shall be liable for payment of any modifications or adjustments required by the secretary.

E. When a transfer of an ownership interest (where there is an existing trust account), is reported to the secretary, as required by this Part, the secretary may, after review, determine, based on the nonsubstantial nature of the interest being transferred or the adequacy of the trust account, that no adjustment or modification to the existing trust agreement is necessary. If this occurs the secretary shall issue a letter of determination to the transferrer indicating that he shall be exempt from liability in accordance with this Part.

F. The party or parties to a transfer who propose to establish a site-specific trust account shall:

1. propose a funding schedule, based on the site restoration assessment, which will fully fund the site restoration at the end of the economic life of the oilfield site;

2. pay some contribution into the trust account at the time of transfer and make quarterly payments into the trust account throughout the economic life of the oilfield site.

G. Site-specific trust account funds shall only be used to restore the specific site to which they are dedicated.

H. At the end of the economic life of an oilfield site the responsible party shall restore the site according to the standards set forth in LAC 43:XIX.101 et seq. If the responsible party has restored the site, upon approval by the assistant-secretary, the monies in the site-specific trust account shall be returned to him.

I. The commission may establish accounting procedures which will enable every transfer, whether it be one well site, a group of well sites, or a field, to be set up in one account for purposes of payment to the account. However, each well site may be accounted for in sub-accounts for purposes of tracking the individual production for its adequacy in maintaining support of the trust. The accounting procedure may also provide for moving a sub-account to a new or existing trust account in the event of a partial transfer of properties subsequent to an initial trust being established thereby segregating the transferred properties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:398 (April 1995), repromulgated LR 21:472 (May 1995).

§2307. Use of the Fund

A. In addition to the administrative cost provided for herein, the monies in the fund may be disbursed and expended as directed by the secretary for the following purposes:

1. any oilfield site assessments or restoration conducted by the department pursuant to this Part. Provided, however, that the amount of money expended for the cost of a site assessment shall not exceed 10 percent of the cost to restore the site;

2. any costs and fees associated with the recovery of site restoration costs and penalties pursuant to R.S. 30:93 and 94;

3. the costs of assessment or restoration of commercial facilities as defined in R.S. 30:73(4) not to exceed 25 percent of any sums deposited within the same calendar year in which the monies are expended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 25. Oilfield Site Restoration

§2501. Office of the Secretary; Oilfield Site Assessments or Restoration

A. The secretary or his agents, upon proper identification and notification, may enter the land of another for purposes of oilfield site assessments or restoration.

B. The secretary may enter into contracts for the purposes of site assessments or restoration to carry out the provisions of this Part, under the following circumstances.

1. When the secretary has declared in writing an emergency, he may take informal, detailed written bids from at least three contractors without the necessity of meeting the requirements of the state public bid law. Before execution of a contract, under emergency declaration, a performance bond shall be furnished by the contractor and the contracts shall be reviewed by the commissioner of administration.

2. Where no emergency exists, all contracts shall be made pursuant to the state public bid law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:472 (May 1995).

§2503. Oilfield Site Restoration Assessments; Site-Specific Trust Accounts

A. In the event that the parties to the transfer of an oilfield site elect to establish a site-specific trust account an oilfield site restoration assessment may be made prior to the transfer, or within one year from the date of the transfer, as required by the secretary.

B. An oilfield site restoration assessment shall be performed by a contractor chosen from the list of contractors approved by the commission or a contractor who submits his credentials to the commission for approval and is subsequently added to the list.

C. A site restoration assessment shall specifically detail site restoration needs and shall provide an estimate of the site restoration costs needed to restore the oilfield site, in accordance with the standards set forth in LAC 43:XIX.101 et seq., based on the conditions existing at the time of the transfer. The site restoration assessment shall be reported on a form provided by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:399 (April 1995), repromulgated LR 21:742 (May 1995).

Chapter 27. Liability; Limitations

§2701. Non-Orphaned Oilfield Sites

A. The responsible party is liable for the site restoration of an unusable oilfield site.

B. If the responsible party fails to complete restoration of an oilfield site and the assistant secretary, after notice and hearing, has declared the site to be unusable, the secretary is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account. After completion of the site restoration any remaining funds in the site-specific trust account shall be remitted to the responsible party.

C. If the site-specific trust account is depleted prior to the payment of all site restoration costs, the department shall attempt to collect the remainder of site restoration costs from the responsible party or ensure that the responsible party completes the site restoration to the satisfaction of the assistant secretary. If the responsible party is still unable to complete the site restoration, and the assistant-secretary declares the site to be orphaned, the Oilfield Site Restoration Fund shall contribute the balance of the restoration costs for the site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:742 (May 1995).

§2703. Orphaned Oilfield Sites

A. If a party has transferred an oilfield site after May 1, 1993, for which a site-specific trust account was established and the transferrer has remained in compliance with this Part he shall not be liable for any site restoration for the non-orphaned or orphaned oilfield site.

B. If the assistant secretary has declared an oilfield site to be orphaned which was transferred prior to May 1, 1993, the secretary may expend monies from the fund to fully restore the site. Except for the responsible party, the secretary shall not be authorized to recover the restoration costs from parties which formerly operated or held working interest in the orphaned site unless the costs to fully restore the site exceed \$200,000. Transfer of an oilfield site shall be deemed to have taken place prior to May 1, 1993, where a purchase and sale agreement has been executed prior to May 1, 1993, and closing takes place within 120 days of execution.

C. If the assistant secretary has declared an oilfield site to be orphaned which was transferred after May 1, 1993, for which no site-specific trust account was established no responsible party, prior operators, or working interest owners shall receive the exemptions provided for in this Part for the subject orphan site.

D. If the assistant secretary has declared an oilfield site to be orphaned which was transferred after May 1, 1993, for which a site specific trust account was established the site shall be restored in the following manner:

1. the secretary shall expend the site-specific trust account funds; and

2. the assistant secretary shall collect any deficiencies from the responsible party; and

3. the secretary shall expend a maximum of \$200,000 from the general oilfield site restoration fund if there are remaining deficiencies; and

4. if there are still further deficiencies the secretary shall recover any remaining costs from any non-exempt prior operators and working interest owners in inverse chronological order from the date on which the oilfield site has been declared orphaned according to procedures established by the assistant secretary.

E. The state shall be exempt from the provisions of this Part.

F. The commission, the secretary, and the assistant secretary, and their agents, shall not be liable for any damages arising from an act or omission if the act or omission is part of a good faith effort to carry out the purpose of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 29. Hearings; Appeals

§2901. Aggrieved Parties; Right to Hearing

A. The secretary shall not unreasonably withhold approval of a site-specific trust account. Any party who applies for a site-specific trust account and who is aggrieved by the decision of the secretary may request a hearing and finally judicial review in accordance with the hearings and appeal process established in Part I Chapter 1 of Title 43 of the Louisiana Administrative Code in the general rules and regulations in the Office of the Secretary.

B. Any party who is aggrieved by a decision under this Part by the commission, the secretary, or the assistant secretary, shall be entitled to a hearing and appeal process as set forth above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).

Chapter 31. Penalties

§3101. Violations of this Part

A. Any violations of this Part shall be subject to the penalties as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:80 et seq.

HISTORICAL NOTE: Promulgated by Department of Natural Resources, Office of Conservation, LR 21:400 (April 1995), repromulgated LR 21:472 (May 1995).