

RS 30:80

PART VII. LOUISIANA OILFIELD SITE RESTORATION LAW

§80. Citation

This Part may be cited as the "Louisiana Oilfield Site Restoration Law".
Acts 1993, No. 404, §2.

RS 30:81

§81. Policy and purpose

A. The legislature finds and declares that:

(1) A present and future benefit to the environment, public health, safety, and welfare would be to clean up, close, and restore oilfield sites.

(2) State laws and regulations must comprehensively address those situations where proper and timely cleanup, closure, and restoration of orphaned oilfield sites must be assured.

B. It is in the public interest and within the police power of this state to establish an oilfield site restoration commission and an oilfield site restoration fund to provide for the proper and timely cleanup, closure, and restoration of oilfield sites, to be administered by the assistant secretary of the office of conservation within the Department of Natural Resources.

C. Nothing in this Part shall be deemed to alter or impair any rights and responsibilities established by contract between private parties.

Acts 1993, No. 404, §2.

RS 30:82

§82. Definitions

As used in this Part, the following terms shall have the meanings ascribed to them in this Section, unless the context or use clearly indicates otherwise:

(1) "Assistant secretary" means the assistant secretary of the office of conservation within the Department of Natural Resources or his authorized representatives.

(2) "Commission" means the Oilfield Site Restoration Commission.

(3) "Department" means the Department of Natural Resources.

(4) "Fund" means the Oilfield Site Restoration Fund.

(5) "Nonproducing oilfield site" means an oilfield site which is not a producing oilfield site and which has not been declared an orphaned oilfield site by the assistant secretary.

(6) "Oilfield site" or "exploration and production (E&P) site" means any oilfield site or exploration and production site as defined in R.S. 30:29(I)(4).

(7) "Orphaned oilfield site" means an oilfield site which has no continued useful purpose for the exploration, production, or development of oil or gas and which has been declared to be an orphaned oilfield site by the assistant secretary under R.S. 30:91.

(8) "Producing oilfield site" means an oilfield site which is associated with the production of oil or gas for at least six months of the preceding calendar year.

(9) "Responsible party" means the operator of record according to the office of conservation records, who last operated the property on which the oilfield site is located at the time the site is about to be abandoned, ceases operation, or becomes an unusable oilfield site, and that operator's partners and working interest owners of that oilfield site. A working interest owner is the owner of a mineral right who is under an obligation to share in the costs of drilling or producing a well on the oilfield site.

(10) "Secretary" means the secretary of the Department of Natural Resources.

(11) "Site restoration" means any and all oilfield site restoration activities required of a responsible party of an oil or gas property by regulations adopted by the office of conservation pursuant to this Subtitle, including without limitation plugging of oil and gas wells, pit closure, site remediation, and removal of oilfield equipment.

(12) "Unusable oilfield site" means an oilfield site which has no continued useful purpose for the exploration, production, or development of oil or gas and for which a responsible party can be located.

Acts 1993, No. 404, §2; Acts 2006, No. 312, §1, eff. June 8, 2006.

RS 30:83

§83. Oilfield Site Restoration Commission; Department of Natural Resources

A. The Oilfield Site Restoration Commission is hereby created within the office of the secretary of the Department of Natural Resources. The commission shall have the power to sue and be sued and shall be domiciled in the parish of East Baton Rouge. Venue for any suit brought by or against the commission shall be in the Nineteenth Judicial District Court.

B. The commission shall consist of ten members comprised as follows:

(1) The secretary of the Department of Natural Resources, who shall serve as the chairman and the assistant secretary, who shall serve as vice chairman. The undersecretary of the department may serve as a proxy member of the board in the absence of the secretary with full authority to act for the secretary as a member of the board.

(2) One person appointed by the governor, who shall serve at the pleasure of the governor.

(3) One person appointed by the governor from a list of three persons submitted by the Louisiana Mid-Continent Oil and Gas Association for an initial term of four years.

(4) One person appointed by the governor from a list of three persons submitted by the Louisiana Mid-Continent Oil and Gas Association for an initial term of two years.

(5) One person appointed by the governor from a list of three persons submitted by the Louisiana Independent Oil and Gas Association who shall serve an initial term of four years.

(6) One person appointed by the governor from a list of three persons submitted by the Louisiana Independent Oil and Gas Association who shall serve an initial term of two years.

(7) One person appointed by the governor from a list of three persons submitted by the Louisiana Landowners Association who shall serve an initial term of three years.

(8) One person appointed by the governor from a list of three persons submitted by representatives of the Louisiana division of the Sierra Club, the Louisiana Wildlife Federation, and the Louisiana division of the Audubon Society, who shall serve an initial term of three years.

(9) One person appointed by the governor from a list of three persons submitted by the Nature Conservancy for an initial term of three years.

(10) The assistant secretary for the office of conservation or his designee shall serve as vice chairman of the commission. The assistant secretary shall not be counted to determine the

number needed to constitute a quorum but shall be counted to establish a quorum. When the secretary is present, the assistant secretary shall not be a voting member.

C. Each person appointed by the governor shall be subject to confirmation by the Louisiana Senate. After the initial term, each successor shall be appointed in the same manner as the initial appointments and shall serve terms of four years.

D. A majority of the membership of the commission shall constitute a quorum for the transaction of business. The commission shall hold regular quarterly meetings and may meet more often as its business may require. Meetings of the commission shall take place at its domicile; however, no more than two meetings per year may be held at places in the state other than East Baton Rouge Parish.

E. The members of the commission shall receive no compensation from the commission nor shall the members of the commission receive any reimbursement for expenses associated with attendance at the meetings of the commission.

F. The powers of the commission shall be limited to the following:

(1) Approve and evaluate a priority list for site restoration annually.

(2) Repealed by Acts 1997, No. 994, §2.

(3) Approve lists of contractors acceptable to conduct site assessment and site restoration.

(4) Repealed by Acts 1997, No. 994, §2.

(5) Review administration of site restoration activities and review the adequacy of site restoration assessments and reopen the funding needs and arrangements for site-specific trust accounts every four years. However, unless the oilfield site is transferred from one party to another after the adoption of a standard for evaluation, site-specific trust accounts established prior to the adoption of a standard for evaluation by the office of conservation, Department of Natural Resources shall not be reassessed if the operator of record provides to the office on an annual basis, utilizing the methodology in use at the time the site-specific trust account was established, proof that the security is adequate to ensure proper closure of the wells upon completion of activity.

(6) Provide general administration and management of the Oilfield Site Restoration Fund and all site-specific trust accounts. However, the commission shall have no authority to expend, disburse, or invest monies in the fund.

(7) Perform any function authorized by this Part or which is consistent with its purpose.

G. The records, documents, and meetings of the commission shall be subject to the same requirements and exceptions regarding access by the public as are the records, documents, and meetings of the State Mineral and Energy Board.

H. The Department of Natural Resources shall adopt rules and regulations, in accordance with the Administrative Procedure Act, to implement the provisions of this Part and to provide for procedures for site assessments and restoration.

I. Nothing in this Part shall be construed to authorize the commission to expend, disburse, or invest monies in the Oilfield Site Restoration Fund.

Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §§1, 2; Acts 2001, No. 15, §1; Acts 2006, No. 145, §1; Acts 2006, No. 812, §1, eff. June 30, 2006; Acts 2008, No. 384, §1; Acts 2009, No. 196, §2, eff. July 1, 2009.

RS 30:84

§84. Powers of the secretary

A. The powers of the secretary shall include without limitation the power to do the following:

- (1) Make expenditures or commitments to make expenditures from the fund or disburse funds for the restoration of oilfield sites as he deems necessary and appropriate.
 - (2) Disburse and approve expenditures or release monies from site-specific trust accounts for restoration of oilfield sites at any time during the life of the oilfield site.
 - (3) Repealed by Acts 1997, No. 994, §2.
 - (4) Adopt and promulgate rules and regulations respecting the administration of this Part.
 - (5) Negotiate and execute contracts, upon such terms as he may agree upon, for legal, financial, engineering, construction, and other professional services necessary to meet the purpose of this Part.
 - (6) Perform such other specific functions as may be enumerated or envisioned by the provisions of this Part.
 - (7) The secretary shall maintain all oversight, supervisory, and fiscal responsibility imposed under the provisions of this Part which are not specifically conferred upon the commission.
- B-C. Repealed by Acts 1997, No. 994, §2.
- D. The powers provided for in this Section shall be in addition to and shall not limit the powers conferred on the secretary in other provisions of this Subtitle or by any other provisions of any state or federal law or regulation.
- Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §§1, 2; Acts 2008, No. 384, §1.

RS 30:85

§85. Powers of the assistant secretary

- A. The powers of the assistant secretary shall include without limitation the power to do the following, subject to the supervision of the secretary:
- (1) Adopt and promulgate rules and regulations implementing the administration of this Part.
 - (2) Perform such specific functions as may be enumerated by the provisions of this Part.
 - (3) The assistant secretary shall perform all regulatory functions imposed by this Part.
 - (4) Modify funding requirements of site-specific trust accounts either upon recommendation of the commission, the secretary, or upon his own determination, based upon changes in operation, site conditions, or trust account status.
- B. The assistant secretary, upon a finding of economic justification and with the concurrence of the commission, may authorize the closure and restoration of nonpriority orphaned oilfield sites by lots which are subject to bidding in large packages, the purpose being to economically decrease the total number of orphaned wells in the state of Louisiana, provided that such action does not reduce the number of priority sites that can be properly closed and restored in any fiscal year.
- C. The aforementioned powers shall be in addition to and shall not limit the powers conferred on the assistant secretary in other provisions in this Title or any other pertinent provision of any state or federal law or regulation.
- Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §1.

RS 30:86

§86. Oilfield Site Restoration Fund

A. There is hereby established a fund in the custody of the state treasurer to be known as the Oilfield Site Restoration Fund, hereafter referred to as the "fund", into which the state treasurer shall, each fiscal year, deposit the revenues received from the collection of the monies enumerated in Subsection D of this Section, after those revenues have been deposited in the Bond Security and Redemption Fund. Out of the funds remaining in the Bond Security and Redemption Fund, after a sufficient amount is allocated from that fund to pay all the obligations secured by the full faith and credit of the state that become due and payable within each fiscal year, the treasurer shall pay into the Oilfield Site Restoration Trust Fund an amount equal to the revenues generated from collection of the fees provided for in Subsection D of this Section. Such funds shall constitute a special custodial trust fund which shall be administered by the secretary, who shall make disbursements from the fund solely in accordance with the purposes and uses authorized by this Part.

B. The funds received shall be placed in the special trust fund in the custody of the state treasurer to be used only in accordance with this Part and shall not be placed in the general fund. The funds provided to the commission pursuant to this Section shall at all times be and remain the property of the commission. The funds shall only be used for the purposes set forth in this Part and for no other governmental purposes, nor shall any portion hereof ever be available to borrow from by any branch of government. It is the intent of the legislature that this fund and its increments shall remain intact and inviolate. Any interest or earnings of the fund shall be credited only to the fund.

C. The treasurer of the state of Louisiana shall certify, to the secretary of the Department of Revenue, the date on which the balance in the fund equals or exceeds ten million dollars. The oilfield site restoration fees on oil and gas provided for in R.S. 30:87 shall not be collected or required to be paid on or after the first day of the second month following the certification, except that the secretary of the Department of Revenue shall resume collecting the fees on receipt of a certification from the treasurer that, based on the expenditures or commitments to expend monies, the fund has fallen below six million dollars. The secretary of the Department of Revenue shall continue collecting the fees until collections are again suspended in the manner provided by this Section. The sums in the site-specific trust accounts within the fund shall not be counted to determine the balance of the fund for the purposes of this Subsection.

D. The following monies shall be placed into the Oilfield Site Restoration Fund:

- (1) Those fees and penalties collected pursuant to R.S. 30:87.
- (2) Private contributions.
- (3) Interest earned on the funds deposited in the fund.
- (4) Civil penalties or costs recovered from responsible parties for oilfield site restoration pursuant to R.S. 30:93 and 94.
- (5) Any grants, donations, and sums allocated from any source, public or private, for the purposes of this Part.
- (6) Site-specific trust accounts; however, the monies of such accounts shall not be used for any oilfield site other than that specified for each respective account.

E. The monies in the fund may be disbursed and expended pursuant to the authority and direction of the secretary or assistant secretary for the following purposes and uses:

- (1) Any oilfield site assessment or restoration conducted by the Department of Natural Resources pursuant to this Part.

(2) The administration of this Part by the Department of Natural Resources in an amount not to exceed seven hundred fifty thousand dollars each fiscal year.

(3) The payment of fees and costs associated with the administration of the fund, site-specific accounts, and any contract with a private legal entity pursuant to this Section.

(4) Any costs and fees associated with the recovery of site restoration costs and penalties pursuant to R.S. 30:93 and 94.

(5) Any costs associated with response to any emergency as provided in R.S. 30:6.1.

(6) Upon approval of the commission, up to five hundred thousand dollars per fiscal year for the office of conservation to act alone, or in conjunction with the voluntarily participating parties, for the assessment and restoration of commercial oilfield waste disposal facilities used for the storage, treatment, or disposal of non-hazardous oilfield waste for a fee or other consideration, which were abandoned, leaving no financially responsible owner, operator, or bonding company, in accordance with the plan of closure as required in the permit, or if the permit did not provide a plan of closure, a plan approved by the commission; however, a responsible person shall not be released from his duty or liability, if any, imposed by this Section.

Acts 1993, No. 404, §2; Acts 1995, No. 297, §§1, 2, eff. July 1, 1995; Acts 1997, No. 994, §1; Acts 1999, No. 618, §1; Acts 1999, No. 1097, §1, eff. July 9, 1999; Acts 2004, No. 768, §1, eff. July 1, 2004; Acts 2008, No. 384, §1.

RS 30:87

§87. Oilfield site restoration fees

A. There is hereby imposed on crude petroleum produced from producing wells in this state a fee in the amount of one and one-half cents on each barrel of oil and condensate. "Oil" and "condensate" shall mean the same such oil and condensate as is taxable under the provisions of Part I of Chapter 6 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950. The fee is in addition to any tax imposed pursuant to the Louisiana Revised Statutes of 1950, Title 47. The provisions of the Louisiana Tax Code shall apply to the administration, collection, and enforcement of the fee imposed herein, and the penalties provided by that code shall apply to any person who fails to pay or report the fee. Collection of the fee shall be suspended in the manner provided by R.S. 30:86(C). Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited into the Oilfield Site Restoration Fund.

B. There is hereby imposed on gas produced from producing wells in this state a fee in the amount of three-tenths of one cent for each thousand cubic feet. "Gas" shall mean the same such gas as is taxable under the provisions of Part I of Chapter 6 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950. The fee is in addition to any tax imposed pursuant to the Louisiana Revised Statutes of 1950, Title 47. The provisions of the Louisiana Tax Code shall apply to the administration, collection, and enforcement of the fee, and the penalties provided by that code shall apply to any person who fails to pay or report the fee. Collection of the fee shall be suspended in the manner provided by R.S. 30:86(C). Proceeds from the fee, including any penalties collected in connection with the fee, shall be deposited into the Oilfield Site Restoration Fund.

C. Repealed by Acts 1997, No. 994, §2.

D. Notwithstanding Subsections A and B of this Section, the rate of the fees imposed by this Section on any well shall be in proportion to the amount of severance taxes being collected on the production of the well.

E. The fees provided for in Subsections A and B of this Section shall be borne by the responsible parties and not by the royalty and overriding royalty owner. The fees provided for in Subsections A and B shall commence with September 1993 production.

F. The site restoration fee shall be the following:

(1) Full rate production: one and one-half cents per barrel on crude oil and condensate or three-tenths of one cent per thousand cubic feet on natural gas and casing head gas.

(2) Reduced rate production such as stripper wells and incapable wells. The site restoration fee for each respective category of oil or gas hereunder shall be in the same proportion to the respective full rate production fees as the reduced rate severance tax to the full rate severance tax for each respective category.

G. Repealed by Acts 2004, No. 412, §2, eff. July 1, 2004.

Acts 1993, No. 404, §2; Acts 1997, No. 994, §§1, 2; Acts 2004, No. 412, §§1, 2, eff. July 1, 2004.

RS 30:88

§88. Oilfield site trust accounts

A. If an oilfield site is transferred from one party to another, a site-specific trust account may be established to separately account for each such site for the purpose of providing a source of funds for site restoration of that oilfield site at such time in the future when restoration of that oilfield site is required. For purposes of this Part, a transfer shall be deemed to have been made once there is a change in ownership of any kind at an oilfield site. Once established, the site-specific trust account shall survive until completion of site restoration of the associated oilfield site.

B. In the event the parties to a transfer elect to establish a site-specific trust account under this Section, the assistant secretary shall require an oilfield site restoration assessment to be made to determine the site restoration requirements existing at the time of the transfer, or at the time the site-specific trust account is established. The oilfield site restoration assessment shall be conducted by approved site assessment contractors appearing on a list approved by the commission or acceptable to the commission. The oilfield 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 based on the conditions existing at the time of transfer, or at the time the site-specific trust account is established.

C. The party or parties to the transfer shall, based upon the site restoration assessment, propose a funding schedule which will provide for the site-specific trust account. The funding schedule shall consider the uniqueness of each transfer, acquiring party, and oilfield site. Funding of the site-specific trust account shall include some contribution to the account at the time of transfer and at least quarterly payments to the account. Cash or bonds in a form and of a type acceptable to the assistant secretary, or any combination thereof, may also be considered for funding. The assistant secretary shall monitor each trust account to assure that it is being properly funded. The funds in each trust account shall remain the property of the commission.

D. The assistant secretary may approve the site-specific trust account for an oilfield site upon review of the assessment and the site-specific trust account that has

been proposed for that oilfield site as provided in the regulations. Such approval shall not be unreasonably withheld.

E. When transfers of oilfield sites occur subsequent to the formation of site-specific trust accounts but prior to the end of their economic life, the assistant secretary and the acquiring party shall, in the manner provided for in this Section, again redetermine cost and agree upon a funding schedule. The balance of any site-specific trust account at the time of subsequent transfer shall remain with the oilfield site and shall be a factor in the redetermination.

F. Once the assistant secretary has approved the site-specific trust account, and the account is fully funded, the party transferring the oilfield site and all prior owners, operators, and working interest owners shall not thereafter be held liable by the state for any site restoration costs or actions associated with the transferred oilfield site. The party acquiring the oilfield site shall thereafter be the responsible party for the purposes of this Part.

G. The failure of a transferring party to make a good faith disclosure of all oilfield site conditions existing at the time of the transfer may render that party liable for the costs of restoration of such undisclosed conditions in excess of the balance of the site-specific trust fund.

H. Except as provided in Subsection E, the parties to a transfer may elect not to establish a site-specific trust account; however, in the absence of such account, the parties shall not be exempt from liability as set forth in Subsection F of this Section.

I. Subject to agreement between the assistant secretary, the seller and the purchaser of an oilfield site sold prior to August 15, 1993, a site-specific trust account can be established or transferred to the state.

J. For unusable oilfield sites, after site restoration has been completed and approved by the assistant secretary, funds from a site-specific trust account shall be disbursed as follows:

(1) The balance of the account existing in the site-specific trust account will be remitted to the responsible party.

(2) Such account shall thereafter be closed.

Acts 1993, No. 404, §2; Acts 1997, No. 994, §1; Acts 2001, No. 14, §1.

RS 30:89

§89. Non-orphan site restoration

A. After due notice and hearing and upon certification from the assistant secretary that a responsible party has failed to undertake site restoration of an unusable oilfield site, the secretary or assistant secretary is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account.

B. The assistant secretary, upon notice and hearing, pursuant to rules adopted by the assistant secretary in accordance with the Administrative Procedure Act, may declare an oilfield site to be an unusable oilfield site. Upon failure of a responsible party to undertake site restoration as ordered by the assistant secretary, the secretary or assistant secretary is authorized to disburse such funds as are necessary for site restoration from the site-specific trust account.

C. For sites restored pursuant to Subsections A and B of this Section, after site restoration has been completed and approved by the assistant secretary, funds from the site-specific trust account will be disbursed as follows:

(1) The balance of the account existing in the site-specific trust account will be remitted to the responsible party. Such account shall thereafter be closed.

(2) If the funds in the site-specific trust account are depleted prior to the payment of all site restoration costs, the department is authorized 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.

(3) If the funds in the site-specific trust account are depleted prior to the payment of all site restoration costs, and if the assistant secretary declares that oilfield site to be an orphaned oilfield site, the Oilfield Site Restoration Fund shall contribute the balance of the restoration costs for that orphaned oilfield site.

D. If a responsible party fails or is unable to restore a site and there is no site-specific trust account, the assistant secretary shall declare the site orphaned in accordance with R.S. 30:91(B).

Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §1.

RS 30:89.1

§89.1. Credits for judgments or compromises

In the event an owner of a property interest in an oilfield site, or in other property affected by oil or gas exploration, development, or production activities on an oilfield site, obtains a final judgment from a court of competent jurisdiction, pursuant to the provisions of this Title or any other law or regulation or any obligation whatsoever, including but not limited to obligations imposed by contract or by law, or enters into a binding compromise, which judgment or compromise awards damages or other relief for injury to such property interest resulting from oil or gas exploration, development, or production activities on an oilfield site, including but not limited to damages equivalent to the costs of site assessment or restoration, or which judgment or compromise requires the performance of site assessment, restoration, or any other operations or activities on an oilfield site, in any action, judicial or administrative, by the state of Louisiana or any state agency to enforce any law or regulation with regard to the consequences of the same oil or gas exploration, development, or production activities on the same oilfield site, then solely to the extent that a judgment or compromise after June 30, 2006, is shown to have been satisfied or discharged by the actual performance of site restoration in accordance with the appropriate regulatory standards of the Department of Natural Resources, office of conservation at a minimum, or by actual site assessment, the party against whom such judgment was rendered, or who is obligated by such compromise, shall be given full credit against the obligation sought to be enforced by the state of Louisiana or any state agency, and such obligation shall be reduced proportionately, in amounts equal to the portion of such judgment or compromise paid, satisfied, or discharged or the costs of the performance of any site assessment, restoration, or other operations or activities required by such judgment or compromise.

Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 2006, No. 312, §1, eff. June 8, 2006.

RS 30:90

§90. Commission's annual report to the legislature

A. The commission shall submit to the Senate Committee on Natural Resources, the House Committee on Natural Resources and Environment, and the Senate Committee on Environmental Quality before March first an annual report that reviews the extent to which the fund has enabled the commission to better protect the environment and enhance the income of the Oilfield Site Restoration Fund.

B. The commission shall generate a three-year plan which comprehensively addresses a balanced restoration of all oilfield sites in the state. The three-year plan shall include an inventory of all wells by classification, a timetable for implementation and completion of site restoration activities and set forth other goals and objectives of the commission. The commission will annually review the status of its three-year plan and shall generate successive three-year plans as needed.

C. The assistant secretary shall furnish the commission with semiannual reports that review the efforts of the assistant secretary to assure proper and timely cleanup, closure, and restoration of oilfield sites.

D. The assistant secretary's semiannual reports shall include:

(1) The number of wells plugged by the assistant secretary.

(2) The number of orphaned oilfield sites, including a breakdown of those which have been identified during the preceding year and those at which site restoration has been completed during the preceding year.

(3) The number of producing and nonproducing oilfield sites.

(4) The status of enforcement proceedings for all sites in violation of the assistant secretary's rules and the time period during which the sites have been in violation, including the status of the assistant secretary's attempts to recover reimbursement for restoration costs.

E. The commission's annual report to the legislature shall include:

(1) The number of wells plugged by the department.

(2) The number of orphaned oilfield sites, including a breakdown of those which have been identified during the preceding year and those at which site restoration has been completed during the preceding year.

(3) The number of producing and nonproducing oilfield sites.

(4) The status of enforcement proceedings for all sites in violation of the assistant secretary's rules and the time period during which the sites have been in violation, including the status of the assistant secretary's attempts to recover reimbursement for restoration costs.

(5) A report on the progress of the commission's three-year plan.

(6) A projection of the amount of oilfield cleanup funds needed for the next year for site restoration.

(7) The status of implementation of the provisions of this Part relating to possession and sale of equipment to recover site restoration costs.

Acts 1993, No. 404, §2; Acts 1996, 1st Ex. Sess., No. 36, §1, eff. May 7, 1996; Acts 2008, No. 580, §2.

RS 30:91

§91. Orphaned oilfield sites

A. A site may be declared to be an orphaned oilfield site by the assistant secretary upon a finding that:

(1) No responsible party can be located, or such party has failed or is financially unable to undertake actions ordered by the assistant secretary; and

(2) The oilfield site either:

(a) Was not closed or maintained in accordance with all statutory requirements and the regulations adopted thereunder; or

(b) Constitutes or may constitute a danger or potential danger to the public health, the environment, or an oil or gas strata.

B.(1) Prior to declaring a site to be an orphaned oilfield site, the assistant secretary shall seek to notify the last operator of record, at his last known address contained in the department records, of the site that is to be declared orphaned and shall publish a notice in the state register that the oilfield site is to be declared orphaned. If resolution of a factual dispute is requested by any owner or operator, the assistant secretary shall hold a fact-finding hearing prior to declaring the site orphaned and the assistant secretary shall make any fact determination necessary to resolve the dispute.

(2)(a) In the event that a site is being declared orphaned, the assistant secretary shall retain a first lien and privilege upon such property superior to any existing mortgages, privileges, or liens of any kind, type, or nature whatsoever. The assistant secretary shall record a notice of such lien with the clerk of court in the parish where the site is located. The assistant secretary shall notify all other lienholders of record who have acquired a privilege, lien, or mortgage upon the property contained within a well site, in writing by registered mail, return receipt requested, that he is declaring the site orphaned. If the salvage value of property at the site exceeds the cost of plugging and abandoning the well site in accordance with this Part, any excess funds shall be paid to other lienholders by rank. Any other excess funds from salvage shall be paid into the fund.

(b) In the event that a lienholder for any reason does not exercise his privilege against the property, he shall not lose his right to secure a money judgment against the owner or operator by whom he is owed a debt; however, all liens and privileges which existed upon the property shall be extinguished.

(c) In the event that lienholder is not properly notified as provided herein, any claim by the holder or holders against the commission, Department of Natural Resources, office of conservation, or the contractors for the value of the salvaged property shall be limited to the actual cash value of the salvaged property at the time of salvage.

(3) Sale or removal of property from an oilfield site which has been declared orphaned without the written consent of the assistant secretary is prohibited. The secretary shall have a claim against the person or persons who have sold or removed such property for the fair market value of the property sold or removed, and the lien and privilege provided herein shall follow such property into the hands of third persons whether such persons are in good or bad faith.

(4) Conducting operations on an oilfield site which has been declared orphaned without the written consent of the assistant secretary is prohibited.

C. For purposes of this Part, the owner of the property upon which an orphaned oilfield site is located shall not be responsible for site restoration unless the owner is also a responsible party as defined herein.

D. In the event that the commissioner declares an emergency as provided in R.S. 30:6.1, the provisions regarding notice to the operator as provided therein shall be applicable to declaring the site orphaned.

Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §1; Acts 1999, No. 618, §1.

RS 30:92

§92. Orphan site restoration

A. The assistant secretary is hereby authorized to conduct site restoration on any site declared to be an orphaned oilfield site. The secretary or assistant secretary may expend sums from the fund and enter into contracts for the purpose of site restoration.

B. Any contractor bidding for a contract to provide services for site restoration as provided in this Part shall take into account the salvage value of all equipment which shall be removed in the clean-up and restoration process and shall so stipulate and identify the value in his bid.

C. A contract for site assessment or site restoration shall require a cash bond, performance bond, or other equivalent surety instrument approved by the assistant secretary, and shall require a formal bid process. All contracts herein shall be exempt from the provisions of the Public Bid Law and the Procurement Code; however, before this exemption from the Public Bid Law and the Procurement Code can be effective the assistant secretary shall promulgate rules in accordance with the Administrative Procedure Act to set forth the procedures, which, to the extent practicable, shall be in substantial compliance with the Public Bid Law and shall require a formal bid process. A project which the assistant secretary has declared in writing to be an emergency may employ a written and thoroughly documented informal bidding procedure in which bids are solicited from at least three bidders. All such contracts shall be reviewed prior to execution by the assistant secretary and all informally bid contracts shall be reviewed by the secretary.

Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §1.

RS 30:93

§93. Recovery of site restoration costs

A. If the assistant secretary undertakes restoration of an orphaned oilfield site under this Part, the secretary shall seek to recover all costs incurred by the secretary,* assistant secretary, penalties, and other relief from any party who has operated or held a working interest in such site, or who is required by law, rules adopted by the department, or a valid order of the assistant secretary to control, clean up, close, or restore the oilfield sites in accordance with the following:

(1) All oilfield sites for which there is no site-specific trust fund shall be restored with monies provided by the fund. Except for the responsible party, the secretary shall not be authorized to recover restoration costs from parties which formerly operated or held a working interest in an orphaned oilfield site unless restoration costs for a particular orphaned oilfield site including support facilities exceed two hundred fifty thousand dollars. Recovery of costs under this Paragraph shall be from the parties in inverse chronological order from the date on which the oilfield site was declared orphaned.

(2) For each oilfield site which becomes orphaned and for which a site-specific trust fund has been created and is fully funded under the provisions of R.S. 30:88(F), recovery of costs shall be against only the responsible party, and the site shall be restored in the following manner:

(a) Using funds in the site-specific trust fund established for the specific site.

(b) Using funds collected from any responsible party in such site where the site-specific trust fund is insufficient.

(c) If funds collected under Subparagraphs (a) and (b) of this Paragraph are insufficient to fully restore said orphaned oilfield site, the fund shall provide funds necessary to make up any deficiency.

(3) If the oilfield site does not meet the provisions of R.S. 30:88(F) and restoration costs exceed two hundred fifty thousand dollars, recovery of costs shall be from the parties in inverse chronological order from the date on which the oilfield site has been declared orphaned, except that a party shall be exempt from liability for restoration of an orphaned oilfield site as provided for in this Part in which said party had an operating or working interest if, and only if, the party complies with all of the following:

(a) The party makes full and reasonable timely contribution to the Oilfield Site Restoration Fund.

(b) The party creates a site-specific trust account for the restoration of the oilfield site and is in compliance with the terms and conditions of the site-specific trust account.

(c) The party makes full disclosure in compliance with R.S. 30:88(G) in the transfer of an oilfield site.

(d) The party complies in full with any penalty assessment which has become final under this Part for any violation under this Part.

(e) The party is not determined to be an individual, partnership, corporation, or other entity which is an operator or working interest owner in an oilfield site determined to be orphaned.

(f) The party is not determined to be a partnership, corporation, or other entity for which a general partner, an owner of more than twenty-five percent ownership interest, or a trustee has held a position of ownership or control in another partnership, corporation, or other entity which is an operator or working interest owner in an oilfield site determined to be orphaned.

(g) The party complies with all reviews of site-specific trust accounts as set forth in this Part, including additional contributions thereto if deemed necessary.

B. The secretary may file suit in a court of competent jurisdiction in East Baton Rouge Parish to recover these costs. The secretary may settle or resolve any suits, disputes, or claims for any penalty under the provisions of this Part. Costs recovered under this Subsection shall be deposited into the Oilfield Site Restoration Fund.

Acts 1993, No. 404, §2; Acts 1995, No. 297, §1, eff. July 1, 1995; Acts 1997, No. 994, §§1, 2; Acts 2004, No. 225, §1.

*As appears in enrolled bill. Should be "the secretary or the assistant secretary,"

RS 30:94

§94. Penalties

A. Failure of a responsible party to comply with its obligation under this Part may cause that responsible party to lose all rights of an operator under this Subtitle in the state of Louisiana. The assistant secretary may cancel forthwith any allowables and deny any permits until restitution is received by cashier's check for costs incurred by the assistant secretary under this Part. Costs shall include without limitation restoration costs, legal expenses, and interest. The fund shall be reimbursed for any expenditures made on behalf of the oilfield site.

B.(1) The assistant secretary may withhold any permit application under this Subtitle to the following:

(a) Any individual, partnership, corporation, or other entity which has been found to have violated Statewide Order 29-B.

(b) Any partnership, corporation, or other entity for which a general partner, an owner of more than twenty-five percent ownership interest, or a trustee has, within the two years preceding the date on which the permit application is filed, held a position of ownership or control in another partnership, corporation, or other entity which has been found to have violated Statewide Order 29-B.

(2) An individual or entity has committed a violation of Statewide Order 29-B if any one of the following has occurred:

(a) On order finding the violation has been entered against the individual or entity, all appeals have been exhausted and the individual or entity is not in compliance or on a schedule for compliance with an order.

(b) The assistant secretary and the individual or entity have entered into an agreed order relating to the alleged violation and the individual or entity is not in compliance or on a schedule for compliance with such order.

(3) The assistant secretary shall not deny the permit application if:

(a) The conditions that constituted the violation have been corrected.

(b) All administrative, civil, and criminal penalties relating to the violation have been paid.

(c) All costs and expenses relating to the violation have been paid.

C. In addition to the foregoing, any person found by the assistant secretary to be in violation of any requirement of this Part, may be liable for a civil penalty, to be assessed by the assistant secretary or court, of not more than twenty-five thousand dollars for each day of the continued noncompliance.

D. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining whether or not a civil penalty is to be assessed and in determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered.

Acts 1993, No. 404, §2.

RS 30:95

§95. No inference of liability on the part of the state

A. Nothing in this Part shall establish or create any liability or responsibility on the part of the commission or the state of Louisiana to pay any costs associated with site restoration from any source other than the fund created by R.S. 30:86 nor shall the commission or the state of Louisiana have any liability or responsibility to make any payments for costs associated with site restoration if the trust created herein is insufficient to do so.

B. The secretary, assistant secretary, the commission, or their agents, on proper identification, may enter the land of another for purposes of site assessment or restoration.

C. The commission, the secretary, and the assistant secretary, and their agents, are not 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.

D. No party contracting with the Department of Natural Resources, office of conservation, or the commission under the provisions of this Part shall be deemed to be a public employee or an employee otherwise subject to the provisions of Parts I through IV of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950.

Acts 1993, No. 404, §2; Acts 1997, No. 994, §1.

RS 30:96

§96. Nullification of Part

This Part shall be null, void, and without effect upon the appropriation by the legislature of all or any portion of the monies in the Oilfield Site Restoration Fund for any use or purpose other than that provided for by this Part; provided however, upon the creation of a trust fund in the constitution of Louisiana for the purposes contained in this Part, the legislature may appropriate all of the monies in the Oilfield Site Restoration Fund to such constitutional trust fund.

Acts 1993, No. 404, §2.

RS 30:97

§97. Implementation; trust accounts

The provisions of this Part regarding the implementation of site-specific trust accounts shall not be implemented until the rules and regulations pertaining to such trust accounts are finally adopted.

Acts 1993, No. 404, §2.

RS 30:101

§101. Repealed by Acts 1974, No. 50, §3