

Regular Session, 2012

SENATE BILL NO. 555

BY SENATOR ADLEY

MINERALS. Provides for the remediation of oilfield sites and exploration and production sites. (8/1/12)

AN ACT

To amend and reenact R.S. 30:29(A), (C)(1) and (3), and (H), relative to the remediation of oilfield sites and exploration and production sites; to provide for the admission or finding of liability by certain parties; to provide terms, conditions, requirements, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:29(A), (C)(1) and (3), and (H) are hereby amended and reenacted to read as follows:

§29. Remediation of oilfield sites and exploration and production sites

A. The legislature hereby finds and declares that Article IX, Section 1 of the Constitution of Louisiana mandates that the natural resources and the environment of the state, including ground water, are to be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people and further mandates that the legislature enact laws to implement this policy. It is the duty of the legislature to set forth procedures to ensure that damage to the environment is remediated to a standard that protects the public interest as established by regulations adopted by the department pursuant to this Section.

1 To this end, this Section provides the procedure for judicial resolution of claims for
2 environmental damage to property arising from activities subject to the jurisdiction
3 of the Department of Natural Resources, office of conservation. The provisions of
4 this Section shall be implemented upon receipt of timely notice as required by
5 Paragraph (B)(1) of this Section. The provisions of this Section shall not be
6 construed to impede or limit provisions under private contracts imposing remediation
7 obligations in excess of the requirements of the department or limit the right of a
8 party to a private contract to enforce any contract provision in a court of proper
9 jurisdiction. **In addition, the provisions of this Section shall not be construed to**
10 **create any cause of action or to impose additional implied obligations under the**
11 **Louisiana Mineral Code or arising out of a mineral lease.**

12 * * *

13 C.(1)(a) If at any time during the proceeding a party admits liability for
14 environmental damage or the finder of fact determines that environmental damage
15 exists and determines the party or parties who caused the damage or who are
16 otherwise legally responsible therefor, the court shall order the party or parties who
17 admit responsibility or whom the court finds legally responsible for the damage to
18 **give notice of the admission or finding of liability to the department. Upon**
19 **receipt of such notice, the department shall notify all current and past operators**
20 **of record of the admission or finding of liability, by certified mail, return receipt**
21 **requested. The notice of admission or finding of liability sent to the department**
22 **shall be a public record and shall be posted in the office of the secretary. Such**
23 **record and posting shall constitute public notice.**

24 **(b) For purposes of this Section, any party may elect to limit an**
25 **admission of liability for environmental damage to responsibility for**
26 **implementing the most feasible plan to evaluate, and if necessary, remediate all**
27 **or a portion of the contamination that is the subject of the litigation to**
28 **applicable regulatory standards. If such an admission is limited to a party's**
29 **responsibility for implementing the most feasible plan, the admission shall not**

1 be construed as an admission of liability for damages under Subsection H of this
2 Section, nor shall such an admission result in any waiver of any rights or
3 defenses of the admitting party. An admission of responsibility for
4 implementing the most feasible plan and the plan approved by the department
5 shall be admissible as evidence in any action.

6 (c) Within thirty days of the department's issuance of the notice required
7 in this Subsection, the court shall refer the matter to the department. The court
8 shall order the party admitting liability or whom the finder of fact determines
9 is legally responsible for the environmental damage to develop a plan or submittal
10 for the evaluation or remediation to applicable standards of the contamination that
11 resulted in the environmental damage. The court shall order that the plan be
12 developed and submitted to the department and the court within a time that the court
13 determines is reasonable and shall allow the plaintiff or any other party or any
14 interested person at least thirty days from the date each plan or submittal was made
15 to the department and the court to review the plan or submittal and provide to the
16 department and the court a plan, comment, or input in response thereto. The
17 department shall consider any plan, comment, or response provided timely by any
18 party or any interested person. The department shall submit to the court a schedule
19 of estimated costs for review of the plans or submittals of the parties by the
20 department and the court shall require the party admitting responsibility or the party
21 found legally responsible by the court to deposit in the registry of the court sufficient
22 funds to pay the cost of the department's review of the plans or submittals. Any plan
23 or submittal shall include an estimation of cost to implement the plan.

24 * * *

25 (3) The department shall use and apply the applicable regulatory standards
26 in approving or structuring a plan that the department determines to be the most
27 feasible plan to evaluate or remediate the environmental damage.

28 * * *

29 H. This Section shall not ~~preclude an owner of land~~ be construed to limit

1 **the rights of private litigants** from pursuing a judicial remedy or receiving a
2 judicial award for private claims suffered as a result of environmental damage,
3 except as otherwise provided in this Section. Nor shall it preclude a judgment
4 ordering damages for or implementation of additional remediation in excess of the
5 requirements of the plan adopted by the court pursuant to this Section as may be
6 required in accordance with the terms of an express contractual provision. Any
7 award granted in connection with the judgment for additional remediation is not
8 required to be paid into the registry of the court. This Section shall not be interpreted
9 to create any cause of action or to impose additional implied obligations under the
10 mineral code or arising out of a mineral lease.

11 * * *

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by J. W. Wiley.

DIGEST

Proposed law provides that the present law will not be construed to create any cause of action or to impose additional implied obligations under the Louisiana Mineral Code or arising out of a mineral lease.

Present law provides that if at any time during the proceeding a party admits liability for environmental damage or the finder of fact determines that environmental damage exists and determines the party or parties who caused the damage or who are otherwise legally responsible therefor, the court shall order the party or parties who admit responsibility or whom the court finds legally responsible for the damage to develop a plan or submittal for the evaluation or remediation to applicable standards of the contamination that resulted in the environmental damage.

Proposed law requires the party who admits liability or who is found to be liable to give notice of the admission or finding of liability to the department. Upon receipt of such notice, the department shall notify all current and past operators of record by certified mail, return receipt requested, of the admission or finding of liability. Further provides that the notice of admission or finding of liability sent to the department shall be a public record and shall be posted in the office of the secretary. Such record and posting shall constitute public notice.

Proposed law allows any interested party to review any submitted plans and to submit comments, input, or additional plans to the department.

Proposed law provides that any party may elect to limit an admission of liability for environmental damage to responsibility for implementing the most feasible plan to evaluate, and if necessary, remediate all or a portion of the contamination that is the subject of the litigation to applicable regulatory standards. Further provides that if such an admission is limited to a party's responsibility for implementing the most feasible plan, the admission shall not be construed as an admission of liability for damages under present law, nor shall such an admission result in any waiver of any rights or defenses of the admitting party.

Proposed law provides that an admission of responsibility for implementing the most feasible plan and the plan approved by the department shall be admissible as evidence in any action.

Proposed law provides that within 30 days of the department's issuance of the notice required in the proposed law, the court shall refer the matter to the department. Further provides that the court shall order the party admitting liability or whom the finder of fact determines is legally responsible for the environmental damage to develop a plan or submittal for the evaluation or remediation to applicable standards of the contamination that resulted in the environmental damage.

Proposed law provides that the applicable standards in approving a plan will be the "applicable regulatory standards".

Proposed law provides that present law shall not be construed to limit the rights of private litigants from pursuing a judicial remedy or receiving a judicial award for private claims suffered as a result of environmental damage, except as otherwise provided in present law.

Effective August 1, 2012.

(Amends R.S. 30:29(A), (C)(1) and (3), and (H))