

1 a party in the litigation. At the hearing, the parties may introduce evidence in
2 affidavit or written form. The plaintiff shall have the initial burden to introduce
3 evidence to support the allegations of environmental damage, following which the
4 moving party shall have the burden to demonstrate the absence of a genuine issue of
5 material fact that the moving party caused or is otherwise legally responsible for the
6 alleged environmental damage. The rules governing summary judgments in the Code
7 of Civil Procedure shall not apply to the preliminary hearing. Within fifteen days of
8 the preliminary hearing, the court shall issue an order on any timely request for
9 preliminary dismissal. A judgment of dismissal under this Paragraph shall be without
10 prejudice, with all parties reserving the right to rejoin the dismissed defendant during
11 the litigation upon discovery of evidence not reasonably available at the time of the
12 hearing on the motion for preliminary dismissal. If not rejoined, a party dismissed
13 under this Paragraph shall be entitled to a judgment of dismissal with prejudice
14 following a final nonappealable judgment on the claims asserted by the party against
15 whom the preliminary dismissal was granted **and shall be entitled to recover from**
16 **the party who asserted the claim an award of reasonable attorney fees, as may**
17 **be determined by the court, and all costs to secure the dismissal.** Any pleading
18 rejoining any defendant previously dismissed under this Paragraph shall relate back
19 to the filing of the original petition or any amendment thereto as provided in the
20 Code of Civil Procedure Article 1153. The finding of the district court shall be
21 without prejudice of any party to litigate the legal responsibility of any potentially
22 responsible party, the allocation of responsibility among the potentially responsible
23 parties, and any other issues incident to the finder of fact's determination of the party
24 or parties who caused the damage or who are otherwise legally responsible for the
25 alleged environmental damage. The procedure for a preliminary dismissal provided
26 by this Paragraph shall be in addition to the pretrial rights and the remedies available
27 to the parties under the Code of Civil Procedure, including the right to civil
28 discovery.

29 * * *

1 C. * * *

2 (2) * * *

3 **(c) In all cases in which a responsible party makes a limited admission**
4 **under Louisiana Code of Civil Procedure Article 1563 there shall be a**
5 **rebuttable presumption that the plan approved by the department is the most**
6 **feasible plan to remediate to applicable regulatory standards the environmental**
7 **damage for which responsibility is admitted. For cases tried to a jury, the court**
8 **shall instruct the jury regarding this presumption if so requested by a party.**

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10 H. This Section shall not preclude an owner of land from pursuing a judicial
11 remedy or receiving a judicial award for private claims suffered as a result of
12 environmental damage, except as otherwise provided in this Section. ~~Nor shall it~~
13 ~~preclude a judgment ordering damages for or implementation of additional~~
14 ~~remediation in excess of the requirements of the plan adopted by the court pursuant~~
15 ~~to this Section as may be required in accordance with the terms of an express~~
16 ~~contractual provision.~~ Any award granted in connection with the judgment for
17 additional remediation **in excess of the requirements of the plan adopted by the**
18 **court** is not required to be paid into the registry of the court. **Damages that may be**
19 **awarded in an action under this Section shall be governed by R.S. 30:29.2.** This
20 Section shall not be interpreted to create any cause of action or to impose additional
21 implied obligations under the mineral code or arising out of a mineral lease.

22 I. For the purposes of this Section, the following terms shall have the
23 following meanings:

24 (1) **"Contamination" shall mean the introduction or presence of**
25 **substances or contaminants into a usable groundwater aquifer, a USDW or soil**
26 **in such quantities as to render them unsuitable for their reasonably intended**
27 **purposes.**

28 (2) "Environmental damage" shall mean any actual or potential impact,
29 damage, or injury to environmental media caused by contamination resulting from

1 activities associated with oilfield sites or exploration and production sites.
2 Environmental media shall include but not be limited to soil, surface water, ground
3 water, or sediment.

4 ~~(2)~~(3) "Evaluation or remediation" shall include but not be limited to
5 investigation, testing, monitoring, containment, prevention, or abatement.

6 ~~(3)~~(4) "Feasible Plan" means the most reasonable plan which addresses
7 environmental damage in conformity with the requirements of Louisiana
8 Constitution Article IX, Section 1 to protect the environment, public health, safety
9 and welfare, and is in compliance with the specific relevant and applicable standards
10 and regulations promulgated by a state agency in accordance with the Administrative
11 Procedure Act in effect at the time of clean up to remediate contamination resulting
12 from oilfield or exploration and production operations or waste.

13 ~~(4)~~(5) "Oilfield site" or "exploration and production (E&P) site" means any
14 location or any portion thereof on which oil or gas exploration, development, or
15 production activities have occurred, including wells, equipment, tanks, flow lines or
16 impoundments used for the purposes of the drilling, workover, production, primary
17 separation, disposal, transportation or storage of E&P wastes, crude oil and natural
18 gas processing, transportation or storage of a common production stream of crude
19 oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody
20 transfer or a sales point. In general, this definition would apply to all exploration and
21 production operations located on the same lease, unit or field.

22 ~~(5)~~(6) "Timely notice" means written notice sent by certified mail, return
23 receipt requested. Such notice shall include a copy of the petition and any other filing
24 in such litigation.

25 * * *

26 **§29.2. Remediation Damages**

27 **In an action under R.S. 30:29, damages may be awarded only for the**
28 **following:**

29 **(1) The cost of funding the feasible plan adopted by the court under R.**

- (2) The cost of additional remediation if required by an express contractual provision providing for remediation to original condition or some other specific remediation standard.
- (3) The cost of correcting or repairing any environmental damage caused by unreasonable or excessive operations based on rules, regulations, lease terms and standards applicable at the time of the activity under questions, provided that such damage is not duplicative of other damages.
- (4) The cost of nonremediation damages.

Proposed law provides that the provisions of proposed law will not be construed to alter the traditional burden of proof or to imply the existence of extent of damages in any action, nor will it affect an award of attorney fees or costs.

Effective August 1, 2014.

(Amends R.S. 30:29(B)(6), (H), and (I) and C.C.P. Art. 1563(A)(2); adds R.S. 30:29(C)(2)(c) and 29.2)