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Insight into Litigation: Orphan Wells and Unleased Owners

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Orphan Program

- Developed in 1993
- Aimed to address growing number of sites for which no responsible party can be located
- Allows the State to engage contractors to close sites where the current operator is unable, due in part, to limitations on LaDCE's ability to compel prior operators to complete the work
- Receives roughly 8 million dollars a year through fees paid by operators on production and inactive wells

Orphan Program

- Orphan sites are prioritized by the threat to public safety and the environment

Orphaned Well Plugging Prioritizing System

06-11-98

Well SN 213638

No.	Factors	Score
1a	Leaking well - natural gas - within 100 m of a public building or residence	32
1b	Leaking well - natural gas	14
1c	Leaking well - water or oil > 1 bbl/day	30
1d	Leaking well - water or oil < 1 bbl/day	10
2a	Hazard to navigation - well submerged or at surface	28
2b	Hazard to navigation - well in navigable waterway (boat hazard)	20
2c	Well in any other body of water	12
3	H2S possible or present	2
4a	Well not leaking but under pressure	8
4b	Well not leaking, pressure status unknown	6
5	Well not leaking, pressure > 500 psi	2
6	No wellhead or wellhead damaged	4
7	No production casing/open hole	2
8a	Production site/pit contaminated substantially	3
8b	Production site/pit contaminated minimally	1
9a	Within 100 m of public water supply (aquifer, well, or surface water)	8
9b	Within 100 m of public building/facility used by public on a recurring basis, or a residence	7
9c	Within 100 m of surface water or wetland	7
9d	Within 100 m of habitat containing rare, threatened, or endangered species (plants and animals)	4
9e	Within 400 m of residential or urban development	3
9f	Within 400 m of surface water or wetland	2
9g	On land actively managed for crops or forage (pasture)	1

Score: 6

Priority: 4

Priority Table	
Priority	Score
Priority 1	> 30
Priority 2	>19
Priority 3	>10
Priority 4	10 & under

Instructions:

1. Assign the appropriate factors to a site.
2. For factors with more than one option in a category,e.g. 4a & 4b,assign only one option.
3. Total all the assigned factor scores for the site.
4. Use the total score and the priority table to set the site priority.

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Orphan Program

- Project design and oversight is handled LaDCE petroleum engineering staff while all other restoration-specific tasks are contracted to approved oilfield contractors

- Project bids are solicited in accordance with the State bid law and projects are awarded to the lowest qualified bidder

Orphan Program

Act of Orphaning

A. A site may be declared to be an orphaned oilfield site by the 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 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.

La. Rev. Stat. Ann. § 30:91

"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.

La. Rev. Stat. Ann. § 30:82

Orphan Program

Cost Recovery

A. If the department undertakes restoration of an orphaned oilfield site under this Part or responds to any emergency as provided in R.S. 30:6.1, the secretary **shall seek to recover all costs** incurred by the secretary, penalties, and other relief from any party who has operated or held a working interest in such site.

La. Rev. Stat. Ann. § 30:93

Orphan Program

Cost Recovery – Who?

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La. Rev. Stat. Ann. § 30:93

Orphan Program

Cost Recovery – Amount?

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.

La. Rev. Stat. Ann. § 30:93

Orphan Program

Cost Recovery – Amount?

"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.

La. Rev. Stat. Ann. § 30:82

"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)(5).

La. Rev. Stat. Ann. § 30:82

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

La. Rev. Stat. Ann. § 30:29

Orphan Program

Cost Recovery – Order?

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.

La. Rev. Stat. Ann. § 30:93

Orphan Program

Cost Recovery - Litel

- Pending Legacy Lawsuit in Jefferson Davis
- Well developed small leak at surface
- Current operator made several unsuccessful attempts to repair and was financially incapable of continuing remedial activities
- DNR sent letters to prior operators requesting the work to be done, stating would be more efficient, warning that they would seek to recover any if incurred
- DNR declared the well an emergency under La R.S. §30:6.1
- DNR intervened in lawsuit
- DNR orphaned the well

Orphan Program

Cost Recovery - *Litel*

- Pursuant to its emergency declaration, the DNR issued Emergency Bid Proposal EMER202-003
- DNR did not follow full public bid procedures (publications, etc.) as allowed under an emergency action
- One company responded and was awarded the project
- Spent roughly 6.3 million
- Well was not fully P&A'd
- Prior operators filed a summary judgment seeking a ruling that cost recovery for the DNR could only be against the current operator and its working interest partners

Orphan Program

Cost Recovery - *Litel*

(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) [Addresses oilfield sites with an established SSTA]

(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

(4) For a response to any emergency as provided in R.S. 30:6.1, recovery of costs shall be against the responsible party.

Orphan Program

Cost Recovery - *Litel*

- Trial Court and Third Circuit ruled in favor of prior operators
- DNR not able to recover the 6.3 million spent

Litel v. Aegis, 2020-373 (La. App. 3 Cir. 11/12/20), 307 So.3d 1087

Orphan Program

Cost Recovery - Litel

(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.

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Orphan Program

Site Specific Trust Accounts – *La R.S. § 30:88*

- Can be established upon transfer of an oilfield site
- Detailed assessment of site restoration requirements existing at time of the transfer
- Trust account is funded through cash or bond
- Assessment updated for additional transfers
- Once established, the transferring party and all prior operators shall not be held liable by the State for any site restoration costs or actions associated with the transferred oilfield site.
- Failure to make a good faith disclosure of site conditions can limit protection

Orphan Program -

Contractual Implications

- **Sale or removal of property** from an oilfield site which has been declared orphaned without the written consent of the 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.

- **Conducting operations** on an oilfield site which has been declared orphaned without the written consent of the secretary **is prohibited**.

La. Rev. Stat. Ann. § 30:91

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

La. Rev. Stat. Ann. § 30:81

Orphan Program

Cooperative Agreement - *La. Rev. Stat. Ann. § 30:93*

The secretary may enter into a site restoration contribution agreement prior to undertaking restoration of an orphaned oilfield site under this Part. In such agreement the secretary shall accept and agree to specific levels of monetary or other contribution towards the cost of restoring an orphaned oilfield site by a party or parties who have operated or held a working interest in such orphaned oilfield site. Upon entering into a site restoration contribution agreement and following final payment by a party to the department of the contribution amount agreed to therein, the party shall be deemed to have met their obligations under this Part and the secretary shall have no right to recover costs incurred by the secretary, penalties, or other relief as contemplated in this Section.

Orphan Program -

Adopting/Severance Tax Benefits

- A new operator can take over a previously orphaned well
- Bond required
- Severance Tax Savings - lower rate and escrow account

Orphan Program -

Key Takeaways

- Identify and plan quickly, but don't necessarily act
- Protect on the front-end with SSTAs
- Identify regulatory gray areas and leverage in negotiations

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Well Cost Reporting Demands Under *La. Rev. Stat. 30:103.1-103.2*

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The 103.1-103.2 Regime

Reporting Requirements to Unleased Owners

103.1 – Upon request, initial report due 90 days after completion and quarterly thereafter

103.2 – Penalty applicable "whenever the operator or producer permits ninety calendar days to elapse from the completion of the well and thirty additional days to elapse from date of receipt of written notice … calling attention to failure to comply."

Initial Demand

- Section 103.1(C):
  - Be made in writing;
  - Contain the unleased mineral owner's name and address; and
  - Be sent to the operator via certified mail.
  - Jurisprudential requirement that demand identify applicable wells/lands/interest.

Required Response

Initial Report:

Costs of drilling, equipping, and completing a well

Quarterly Report:

(1) production from a well

(2) the price received for production from any purchaser

(3) operating costs and expenses for the well

(4) additional costs to enhance or restore production of a well

All reports must be sworn, detailed, and itemized

All reports must be timely sent via certified mail

Potential Pitfalls

- Failure to timely report
- Failure to adequately and sufficiently report each category of well costs in a detailed and itemized manner
- Failure to provide sworn information
- Failure to transmit reports by certified mail
- Failure to report previously unknown information within 30 days of receipt of that information or in the next quarterly report, whichever is later
- Failure to report de minimus amounts in January of the following calendar year

Potential Damages

- Operator "shall forfeit his right to demand contribution from the owner or owners of the unleased oil and gas interest for the costs of the drilling operations of the well."

- The penalty can include both pre-production and post-production costs

Mistretta

***Mistretta v. Hilcorp Energy Co.*, 2024-313 (La. App. 3 Cir. 9/10/24), 395 So.3d 37**

- September 3, 2022 — Well Completed
- December 7, 2022 — Plaintiffs request unleased owner reports
- February 6, 2023 — After call, operator e-mails information
- February 20, 2023 — Operator sends report by certified mail
- March 8, 2023 — Plaintiff sends second letter claiming operator had forfeited right to demand contribution
- March 28, 2023 — Plaintiff files suit seeking

Mistretta

***Mistretta v. Hilcorp Energy Co.*, 2024-313 (La. App. 3 Cir. 9/10/24), 395 So.3d 37**

- Plaintiff argued only one notice by unleased owners is required by relying on the wording of La R.S. 30:103.2 alone

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Mistretta

***Mistretta v. Hilcorp Energy Co.*, 2024-313 (La. App. 3 Cir. 9/10/24), 395 So.3d 37**

103.1 - Whenever there is included within a drilling unit, as authorized by the secretary, lands producing oil, gas, brine, or any combination thereof upon which the operator or producer has no valid oil, gas, or mineral lease, **the operator or producer shall issue the following reports** to the owners of the interests by a sworn, detailed, itemized statement

103.2 - Whenever the operator or producer permits ninety calendar days to elapse from completion of the well and thirty additional calendar days to elapse from date of receipt of **written notice** by certified mail from the owner or owners of unleased oil, gas, or brine interests **calling attention to failure to comply with the provisions of R.S. 30:103.1**, such operator or producer shall forfeit his right to demand contribution from the owner or owners of the unleased oil, gas, or brine interests for the costs of the drilling operations of the well.

Mistretta

***Mistretta v. Hilcorp Energy Co.*, 2024-313 (La. App. 3 Cir. 9/10/24), 395 So.3d 37**

- State Trial Court ruled in Plaintiff's favor

- Louisiana Third Circuit:

"we find that the provisions of La.R.S. 30:103.1 should be read in conjunction with the provisions of La.R.S. 30:103.2, and when read together, the statutes provides that there must be two separate notices."

Best Practices

- Always respond
- Implement Systems to Ensure Quarterly Reporting
- Always Double-Check a Demand's Compliance with the Strict Requirements of Section 103.1.
- Follow the details: Required Information, Sworn, Certified Mail, etc.