# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

**BY Hughes, J.:**

2021-C-00856 STATE OF LOUISIANA, EX REL. JUSTIN DALE TUREAU VS. BEPCO, L.P., BOPCO, LLC, CHEVRON U.S.A. INC., CHISOLM TRAIL VENTURES, L.P., AND HESS CORPORATION, A DELAWARE CORPORATION (Parish of East Baton Rouge)

**AFFIRMED, RENDERED AND REMANDED. SEE OPINION.**

Weimer, C.J., additionally concurs and assigns reasons.
Crain, J., dissents and assigns reasons.
McCallum, J., dissents.

# SUPREME COURT OF LOUISIANA

**NO. 2021-C-0856**

**STATE OF LOUISIANA, EX REL. JUSTIN DALE TUREAU**

**VS.**

**BEPCO, L.P., BOPCO, LLC, CHEVRON U.S.A. INC., CHISOLM TRAIL VENTURES, L.P., AND HESS CORPORATION, A DELAWARE CORPORATION**

*On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of East Baton Rouge*

**HUGHES, J.**

The court is presented with the *res nova* issues of the prescriptive period applicable to a citizen suit for injunctive relief pursuant to LSA-R.S. 30:16, and the necessary allegations to state a cause of action under LSA-R.S. 30:14 and/or LSA-R.S. 30:16. As to what prescriptive period, if any, is applicable to such a suit, we hold that a LSA-R.S. 30:16 citizen suit is not subject to liberative prescription. We further find that, insofar as the petition alleges that defendants are violating conservation laws, rules, regulations, or orders, the allegations are sufficient to defeat an exception of no cause of action. We therefore affirm the ruling of the First Circuit Court of Appeal, which overruled defendants' exceptions of prescription, overrule the exceptions of no cause of action, and remand this case for further proceedings.

## APPLICABLE LAW

The public policy of environmental protection is enshrined in Louisiana's Constitution. It directs that the "natural resources of the state" are to "be protected, conserved, and replenished insofar as possible and consistent with the health, safety,

and welfare of the people," and mandates that the legislature "enact laws to implement this policy." LSA-Const. art. IX, §1. In light of this constitutional mandate, the Louisiana legislature has acknowledged its "duty to set forth procedures to ensure that damage to the environment is remediated to a standard that protects the public interest," creating an extensive body of law to address every phase of the oil and gas exploration process, from the initial exploration and drilling phases to cleanup and disposal of wastes. See LSA-R.S. 30:29(A). The Office of Conservation, directed and controlled by the Commissioner of Conservation, was established to oversee and enforce these conservation laws. LSA-R.S. 30:1 *et seq.* The Commissioner has jurisdiction and authority over all persons and property necessary for the effective enforcement of that with which he is tasked with overseeing, and the laws relative to oil and gas conservation. LSA-R.S. 30:4. Pursuant to LSA-R.S. 30:14, the Commissioner has a duty to restrain any person who "is violating or is threatening to violate" conservation law:

> Whenever it appears that a person is violating or is threatening to violate a law of this state with respect to the conservation of oil or gas, or both, or a provision of this Chapter, or a rule, regulation, or order made thereunder, the commissioner shall bring suit to restrain that person from continuing the violation or from carrying out the threat.
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> Venue shall be in the district court in the parish of the residence of any one of the defendants or in the parish where the violation is alleged to have occurred or is threatened.
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> In this suit, the commissioner may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts warrant, including, when appropriate, injunctions restraining a person from moving or disposing of illegal oil, illegal gas, or an illegal product. Any or all of these illegal commodities may, in the court's discretion, be ordered impounded or placed under the control of an agent appointed by the court.

If, after receipt of sufficient notice, the Commissioner fails to honor this duty, LSA-R.S. 30:16 authorizes "any person in interest adversely affected by the violation" to institute proceedings "to prevent any or further violations":

> If the commissioner fails to bring suit within ten days to restrain a violation as provided in R.S. 30:14, any person in interest adversely

> affected by the violation who has notified the commissioner in writing of the violation or threat thereof and has requested the commissioner to sue, may bring suit to prevent any or further violations, in the district court of any parish in which the commissioner could have brought suit. If the court holds that injunctive relief should be granted, the commissioner shall be made a party and shall be substituted for the person who brought the suit and the injunction shall be issued as if the commissioner had at all times been the complaining party.

Thus, this citizen suit provision grants to private citizens the authority to initiate enforcement actions to restrain violations of conservation laws and regulations by seeking injunctive relief, whether that be a mandatory injunction (one that orders a responsible party to properly remediate contaminated land in compliance with state regulations) or a prohibitory injunction (one that restrains a responsible party from further violations of the Conservation law).

Citizen suit provisions such as LSA-R.S. 30:16 have been universally recognized as an additional enforcement "safety net" that is authorized, necessary, and integral to the protection of public health and resources. Louisiana Revised Statutes 30:16, like most citizen suit provisions, does not allow for compensatory relief such as damages. Rather, the sole form of relief available under this provision is an equitable one, intended to promote the public interest of protecting and conserving the State's natural resources by ensuring compliance with conservation law and environmental regulations.

## FACTS AND PROCEDURAL HISTORY

Justin Dale Tureau instituted a citizen suit pursuant to LSA-R.S. 30:16,[1] alleging that defendants drilled and operated numerous oil and gas wells on his property, or on adjacent property, as well as constructed and used unlined earthen pits. Specifically, Tureau alleged that said unlined pits were either never closed, or were not closed in conformance with environmental rules and regulations, including Statewide Order 29-B, L.A.C. 43:XIX.101, *et seq*, which, among other things,

[1] Tureau sent the notice required under LSA-R.S. 30:16 on August 31, 2016 and September 27, 2016, prior to filing his suit on September 14, 2017.

requires the registration and closure of existing unlined oilfield pits, as well as the remediation of various enumerated contaminants in the soil to certain minimum standards. Tureau prayed for injunctive relief under LSA-R.S. 30:16, forcing defendants' compliance with Statewide Order 29-B.

Defendants filed exceptions, raising the objections of prescription and no cause of action. In support of their exception of prescription, defendants alleged that the one-year prescriptive period set forth in LSA-C.C. article 3492 applies to Tureau's claims. Because Tureau knew of damage to his property in 2013 when he filed a prior lawsuit in tort for compensatory damages, defendants argued that his claims are prescribed.

In opposition to the exception of prescription, Tureau argued that the legislature did not provide a prescriptive period applicable to a suit for injunctive relief under LSA-R.S. 30:16, and therefore such claims are imprescriptible. Tureau further argued that, because the Commissioner must be substituted as the party plaintiff if the court determines that injunctive relief is warranted, the State of Louisiana is the real party in interest in this case. Because prescription does not run against the State, the claims are not prescribed. Alternatively, Tureau alleged that the contamination from defendants' failure to comply with environmental regulations is still present, and therefore his claims are not prescribed under the continuing tort doctrine.

The district court sustained defendants' exceptions of prescription and dismissed the claims against them, finding that a one-year prescriptive period applied. In light of its ruling on prescription, the district court dismissed the exception of no cause of action as moot. The First Circuit Court of Appeal, however, reversed that judgment, finding that administrative enforcement suits such as Tureau's are not subject to the one-year prescriptive period applicable to delictual actions for damages. **State ex rel. Tureau v. BEPCO, L.P.**, 21-0080 (La. App. 1

Cir. 5/19/21), 326 So.3d 925. The First Circuit distinguished a suit for injunctive relief from a traditional tort suit for compensatory damages, noting that all of the cases cited to support the application of a one-year prescriptive period involved claims for damages. The First Circuit further found that its conclusion was bolstered by statements of the supreme court in **Marin v. Exxon Mobil Corp.**, 09-2368, 09-2371 (La. 10/19/10), 48 So.3d 234, and **Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.**, 10-2267, 10-2272, 10-2275, 10-2279, 10-2289 (La. 10/25/11), 79 So.3d 246. Specifically, the First Circuit noted that, while the **Marin** court found that the plaintiff's delictual action for property damages for the remediation of contamination was prescribed, and that the continuing tort doctrine was not applicable, this court, in doing so, stated as follows:

> We note that one of the reasons we granted this writ was to determine whether a subsequent purchaser has the right to sue for property damages that occurred before he purchased the property, particularly where the damage was not overt. However, we need not reach that determination in this case because, assuming the [plaintiffs] had a right as a subsequent purchaser to sue in tort for property damage, that right has prescribed. *Further, we note that regardless of who has standing to pursue claims for money damages, the current owner of property always has the right to seek a regulatory cleanup of a contaminated site.* La. R.S. 30:6(F); La. R.S. 30:16.
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> **Marin**, 48 So.3d at 256, n.18. (Emphasis added).

Additionally, in **Eagle Pipe**, this court held that a landowner, who discovered after the purchase of the land that it had been contaminated by an oil and trucking company prior to the sale, had no right to sue the oil and trucking company for that nonapparent property damage absent an assignment or subrogation of that right by the previous landowner. In doing so, however, the First Circuit noted that the supreme court also discussed the legislative choices reflected in prescription laws that may bar a landowner's claim for monetary damages for contamination that occurred in the past, stating as follows:

> We are not unaware of the effects which the rules of discovery and prescription will have on certain fact situations under this analysis,

> especially where the damage to property occurred in the distant past, where property rapidly changes hands or where ancestors in title are non-existent. We find the rules of discovery and prescription are deliberate legislative choices which ultimately limit otherwise imprescriptible torts and which maintain certainty in transactions involving immovable property. The legislature, if it chose, could have created a right of action to seek damages against tortfeasors for damage to property which affects current property owners no matter when the damage occurred, or could have made an exception to prescription rules for long-term contamination of property. But such legislation has not been enacted. *Instead, the legislature has decided the only addition to current legal remedies is a mechanism for remediating the property*.

**Eagle Pipe**, 79 So.3d at 276. (Emphasis added; footnotes omitted).

In a footnote to the italicized statement, the **Eagle Pipe** court identified LSA-R.S. 30:16 as one such remedy for the remediation of property. Based on these statements in **Marin** and **Eagle Pipe**, the First Circuit in the case at bar reasoned that "it is apparent that the Louisiana Supreme Court does not consider actions brought pursuant to La. R.S. 30:16 to be delictual actions for damages or that such actions are subject to the one-year liberative prescription period applicable to delictual actions." **State ex rel. Tureau**, 326 So.3d at 933. Although the First Circuit held that the one-year prescriptive period for delictual actions does not apply to a citizen suit under LSA-R.S. 30:16, it specifically declined to determine which prescriptive period, if any, applies to such actions. **Id.** We granted writs in this case in order to make that determination. **State ex rel. Tureau v. BEPCO, L.P.**, 21-0856 (La. 10/19/21), 326 So.3d 265. We further ordered additional briefing and argument on the issue of whether ongoing conduct (not merely harm resulting from past conduct) is required to state a cause of action under LSA-R.S. 30:16.

## DISCUSSION AND ANALYSIS

### 1. Prescription

Because resolution of the issue herein involves a question of law, it is reviewed under a *de novo* standard of review. See **Thibodeaux v. Donnell**, 08-2436 (La. 5/5/09), 9 So.3d 120, 122-23 (citing **Holly & Smith Architects, Inc. v. St.**

**Helena Congregate Facility, Inc.**, 06-0582 (La.11/29/06), 943 So.2d 1037).

"[T]here is no prescription other than that established by legislation." LSA-C.C. art. 3457. For this reason, "[p]rescriptive periods may not be extended by analogy." **Caldwell Parish Police Jury v. Town of Columbia**, 40,865 (La. App. 2 Cir. 3/15/06), 930 So.2d 65, 69, rev'd on other grounds on reh'g, 06-1565 (La. App. 2 Cir. 10/6/06), 938 So.2d 75. Rather, it is "well settled that prescription is *stricti juris* and the statutes on the subject cannot be extended from one action to another, nor to analogous cases beyond the strict letter of the law." **Duer & Taylor v. Blanchard, Walker, O'Quin & Roberts**, 354 So.2d 192, 194 (La. 1978); see also **Bunge Corp. v. GATX Corp.**, 557 So.2d 1376, 1380 (La. 1990); **Acad. Park Improvement Ass'n v. New Orleans**, 469 So.2d 2 (La. App. 4 Cir.), writ denied, 475 So.2d 361 (La. 1985).

The party raising an exception of prescription has "the burden of proving that the claim has prescribed." **Dominion Expl. & Prod., Inc. v. Waters**, 07-0386, 07-0287 (La. App. 4 Cir. 11/14/07), 972 So.2d 350, 357. Courts should resolve doubts about a prescription question in favor of giving the litigant his day in court. **Orthopaedic Clinic of Monroe v. Ruhl**, 34,700 (La. App. 2 Cir. 5/11/01), 786 So.2d 323, 328, writ denied, 01-1727 (La. 10/5/01), 798 So.2d 970.

According to the Louisiana Civil Code, there are only three forms of prescription: acquisitive, liberative, and prescription of nonuse. See LSA-C.C. art. 3445. Of the three, only liberative prescription, defined as a "period of time fixed by law for the exercise of a right," could be invoked to bar the claims herein. See **Taranto v. La. Citizens Prop. Ins.**, 10-0105 (La. 3/15/11), 62 So.3d 721, 726 (citing **State ex. rel. Div. of Admin. v. McInnis Bros. Constr.**, 97-0742 (La. 10/21/97), 701 So.2d 937, 939). Although liberative prescription does bar certain actions, the comments to revised article 3447 make it clear that not all actions are subject to prescription. See LSA-C.C. art. 3447, comment (b); 58 Tul. L. Rev. 593,

596.

Defendants do not dispute that the legislature has not enacted a specific liberative prescription statute applicable to claims for injunctive relief under LSA-R.S. 30:16. They argue, nevertheless, that such claims, by analogy, are subject to the one-year prescriptive period applicable to delictual actions for damages, set forth in LSA-C.C. article 3492, which states, in relevant part:

> Delictual actions are subject to a liberative prescription of one year. This prescription commences to run from the day injury or damage is sustained.

By its clear language, Article 3492 applies to "[d]elictual actions," for "injury or damage." See **Richard v. Wal-Mart Stores, Inc.**, 559 F.3d 341, 347 (5th Cir. 2009); see also Saul Litvinoff, Obligations § 5.2, in 6 Louisiana Civil Law Treatise (2d. ed. 1999). As the term "damages" refers to "pecuniary compensation, recompense, or satisfaction for an injury sustained," Article 3492 therefore applies to a claim in which a plaintiff seeks a monetary award as compensation for damages allegedly sustained. See **Fogle v. Feazel**, 201 La. 899, 10 So.2d 695, 698 (1942). Tureau, however, seeks no such relief. Rather, in a citizen suit, citizens effectively stand in the shoes of the governmental regulatory agency to seek enforcement of the law, and any benefit from the lawsuit, whether injunctive or monetary, inures to the public. See **Sierra Club v. Chevron U.S.A., Inc.**, 834 F.2d 1517, 1521 (9th Cir. 1987); see also **Friends of the Earth, Inc. v. Laidlaw Env. Svcs.**, 528 U.S. 167 (2000).

We are further persuaded by the analysis in **Salvation Army v. Union Pacific Railroad, Inc.**, No. 616-CV-0347, 2017 WL 3528903 (W.D. La. 3/8/17). Recognizing that citizen suits seeking to enforce environmental regulations pertain to fundamentally-different public law matters, and are therefore nothing like private tort claims, the **Salvation Army** court concluded that the Louisiana Supreme Court would not find the one-year prescriptive period for tort actions applicable to

Louisiana Environmental Quality Act (LEQA) citizen suits. In reaching this conclusion, the **Salvation Army** court expressly disagreed with **Morris & Dickson Co. v. Jones Brothers Co.**, 29,379 (La. App. 2 Cir. 4/11/97), 691 So.2d 882, 895, wherein the Second Circuit Court of Appeal analogized the citizen suit cause of action under LEQA to a tort cause of action, concluding in *dicta* that the LEQA citizen suit claim would therefore be prescribed under the one-year prescription period applicable to torts. The **Salvation Army** court pointed out that the only support offered by the Second Circuit for its conclusion was a single law review article, which "characterized the citizen suit provisions of the Act as arguably creating a new tort."[2] **Salvation Army**, at *9. The **Salvation Army** court, however, clarified that:

> The parties have not cited and this Court has not found any authority in either the Louisiana Supreme Court, the Louisiana constitution, or the states' statutes to support the principle that the LEQA statute has created a new tort and is subject to the one-year prescriptive period.
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> **Salvation Army**, at *9.

In light of the clear language of Article 3492, the limited relief available under LSA-R.S. 30:16 citizen enforcement actions, and the duty of this court to strictly construe prescriptive statutes in favor of maintaining the action, we agree with the First Circuit. The one-year prescriptive period set forth in Article 3492 and relative to delictual actions for damages is not applicable to an enforcement action for injunctive relief under LSA-R.S. 30:16.

Nor do we find that a LSA-R.S. 30:16 citizen enforcement action is subject to the ten-year prescriptive period in LSA-C.C. article 3499, which states:

> Unless otherwise provided by legislation, a personal action is subject to a liberative prescription of ten years.[3]

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[2] See K. Murchison, "*Enforcing Environmental Standards Under State Law: The Louisiana Environmental Quality Act*," 57 La. L. Rev. 497, 555 (1997).

[3] Louisiana Code of Civil Procedure article 422 defines "personal action," "real action," and "mixed action," as follows:

A citizen enforcement action under LSA-R.S. 30:16 is unique. A citizen suit has characteristics that are particular to it alone and which set it apart from more traditional actions. Citizen suit provisions are common to environmental regulatory statutes because of the unique challenges faced by those tasked with their enforcement. In fact, every major federal environmental regulatory statute contains a citizen suit provision, save the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The most notable distinction of a LSA-R.S. 30:16 action is perhaps the fact that, although a citizen plaintiff institutes the action in his own name, he is essentially acting for the Commissioner. By permitting citizens to pursue injunctive relief when the Commissioner fails to do so, citizen suit provisions turn over to private citizens the function of enforcing the law, giving to those citizens the ability to act in a manner normally reserved to the government. Specifically, LSA-R.S. 30:16 encourages citizens to seek judicial enforcement of environmental regulations when the Commissioner has failed to act, or where the sufficiency of the action in protecting the public is questionable. See **Morris & Dickson Co.**, 691 So.2d at 894. This legislatively-authorized citizen participation is aimed at achieving two goals, namely: 1) public input in substantive environmental matters; and, 2) to safeguard against abuses in the administrative process. **Id.** Citizen suit provisions do not offer any "private rewards" because citizen plaintiffs are guided by the benefit to the public. See **325-343 E. 56th St. Corp. v. Mobil Oil Corp.**, 906 F.Supp. 669, 685 (D.D.C. 1995).

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A personal action is one brought to enforce an obligation against the obligor, personally and independently of the property which he may own, claim, or possess.

A real action is one brought to enforce rights in, to, or upon immovable property.

A mixed action is one brought to enforce both rights in, to, or upon immovable property, and a related obligation against the owner, claimant, or possessor thereof.

Additionally, LSA-R.S. 30:16 requires that a citizen plaintiff first provide the Commissioner with a ten-day notice of the alleged violation or threat of a violation. Only if the Commissioner fails to seek a court order to enjoin the alleged violation may the citizen plaintiff institute the action. As such, the Commissioner retains primary authority over LSA-R.S. 30:16 actions insofar as he may prevent the citizen plaintiff's ability to institute an enforcement action simply by electing to institute the action himself.

Moreover, the language of LSA-R.S. 30:16 states that "any person in interest adversely affected by the violation…may bring suit to prevent any or further violations . . . " As such, the clear language of the statute limits the relief available to citizen plaintiffs to injunctive relief. Further, if the court determines that an injunction is warranted, the statute states that, "the commissioner shall be made a party and shall be substituted for the person who brought the suit and the injunction shall be issued as if the commissioner had at all times been the complaining party."

LSA-R.S. 30:16 is clearly narrowly tailored to serve the best interest of the public and ensures that any relief granted shall be issued in favor of the State, through the Commissioner. The statute is therefore intended for the benefit of the public; it is not intended to provide a citizen plaintiff with a private, personal action for damages. Rather, by giving private citizens the ability to institute enforcement actions and enjoin conservation law violations, the statute accomplishes the purpose of the State's environmental laws and regulations (*i.e.,* to preserve, restore, and conserve natural resources by the prevention and remediation of contamination), and unequivocally forecloses any possibility of LSA-R.S. 30:16 being used by a citizen plaintiff as a means of pursuing and/or obtaining a personal award of any kind.

Federal courts considering similar citizen suit provisions in major federal environmental protection statutes, including the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Clean Air Act (CAA), and

the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), have also acknowledged the unique nature of citizen suits. Opinions addressing the issue of prescription relative to the RCRA's citizen suit provision, although not binding, are nevertheless beneficial considering the similarities of the language and purpose of the RCRA to the language and purpose of Louisiana's conservation law.[4]

In **Meghrig v. KFC Western, Inc.**, 516 U.S. 479 (1996), the United States Supreme Court explained that the RCRA is designed to deal with actual and immediate threats to the environment, and that its citizen suit provision creates a primarily equitable remedy to enjoin contributors to solid or hazardous wastes threatening health or the environment. Subsequently, in **Negli Equip. Co. v. John A. Alexander Co.**, 949 F.Supp. 1435 (C.D. Cal. 1996), the court reasoned that Congress did not intend for courts to apply a statute of limitations to RCRA actions seeking only prospective, equitable relief because the RCRA only comes into play if there is a present danger. **Negli Equip.**, 949 F.Supp. at 1435; see also **A-C Reorganization Trust v. E.I. Dupont De Nemours & Co.**, 968 F.Supp. 423 (E.D. Wis. 1997). Specifically, emphasizing that "courts must at least consider RCRA's

[4] RCRA's citizen suit provision is found in 42 U.S.C. §6972 and provides, in part, as follows:

> [A]ny person may commence a civil action on his own behalf—
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> ***
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> (B) against any person, including the United States and any other governmental instrumentality or agency, …including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.
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> ***
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> …The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

unique purposes before finding that another statute is relevant or analogous," the United States District Court for the Eastern District of Wisconsin found that, "[b]ecause [RCRA's citizen suit provision] is meant to further the national policy of remedying present or future imminent harms, not to compensate for past cleanups, there is no relevant or appropriate statute of limitations for actions seeking only injunctive relief, a fundamentally equitable remedy." **A-C Reorganization**, 968 F.Supp. at 427.

In concluding that RCRA citizen suits for injunctive relief are imprescriptible, the language and purpose of the RCRA was compared and contrasted with that of CERCLA, a statute that provides for post-cleanup cost recovery. Specifically, the Supreme Court noted that the "national policy behind RCRA is to minimize the present and future threat to human health and the environment." **Meghrig**, 516 U.S. at 486, 116 S.Ct. at 1255. In contrast, CERCLA was passed a few years after the RCRA and explicitly permits the government to recover "all costs of removal or remedial action." **Id.** The Supreme Court found that, "Congress thus demonstrated that it knew how to provide for the recovery of clean-up costs, and that the language used to define the remedies under RCRA does not provide that remedy." **Id.** The Court further noted that a party could be forced to help with a cleanup no matter what the costs under the RCRA, while CERCLA, which allows a problem to be reviewed in hindsight, only permits recovery of "reasonable" costs—a distinction that seems to highlight the difference between the RCRA's "immediate action" stance and CERCLA's more traditional tort liability stance. **Meghrig,** 516 U.S. at 486; **Negli Equip.**, 949 F. Supp. at 1440. Additionally, in **Meghrig**, the Supreme Court noted that, unlike CERCLA, the RCRA has no statute of limitations. In the Supreme Court's view, Congress would not have passed a law permitting recovery of past clean-up costs without providing a statute of limitations.

An action under LSA-R.S. 30:16 is statutorily limited to seek only prospective, equitable relief for violations or threats of violations of conservation law or other environmental regulations. A citizen suit under LSA-R.S. 30:16 is thus akin to the RCRA's "immediate action" stance. These statutes are designed with the health and safety of the public in mind, and are meant to stop threats to the environment.

Although the RCRA and the conservation law seem to share the common goal of removing existing environmental harms, the citizen provision of the RCRA, unlike LSA-R.S. 30:16, allows a citizen enforcer to seek civil penalties in addition to injunctive relief. The courts, however, have distinguished actions seeking injunctive relief (an equitable remedy) from those seeking the assessment of civil fines or penalties (a legal remedy), finding that an "RCRA action only seeking an order to compel other parties to help with clean-up is not akin to an action seeking a civil fine or penalty." **Negli Equip.**, 949 F.Supp. at 1439. On that basis, courts have declined to apply the five-year statute of limitations set forth in 28 U.S.C. §2462,[5] and applicable to environmental citizen suit actions for civil penalties. See **A-C Reorganization Trust,** 968 F.Supp. at 428; see also **Negli Equip.**, 949 F.Supp. at 1435.

Moreover, in **A-C Reorganization**, the court also explicitly rejected the argument that the "**Cope-Nemkov** rule,"[6] (which essentially holds that, where a statute allows both legal and equitable remedies, a legal statute of limitations applies

[5] 28 U.S.C. §2462 creates a five-year statute of limitations for actions "for the enforcement of any civil fine, penalty, or forfeiture" where a substantive federal law provides no statute of limitations.

[6] In **Cope v. Anderson**, 331 U.S. 461 (1947), the Supreme Court held that where "only the scope of the relief sought and the multitude of parties sued . . . gives equity concurrent jurisdiction to enforce the legal obligation here asserted . . . equity will withhold its relief . . . where the applicable statute of limitations would bar the concurrent legal remedy."

Thereafter, relying on **Cope**, the Seventh Circuit, in **Nemkov v. O'Hare Chicago Corp**., 592 F.2d 351, 355 (7th Cir. 1979), held that where "[e]quitable jurisdiction is concurrent [with legal jurisdiction] even though plaintiff chooses to forego damages and to seek only equitable relief . . . [I]f an action at law for damages would be barred, so too is the action in equity."

even if a plaintiff seeks only equitable relief) bars injunctive relief in citizen enforcement suits. **A-C Reorganization**, 968 F.Supp. at 429. The court acknowledged that a citizen enforcer under the RCRA may seek the imposition of a legal remedy in the form of civil penalties in addition to injunctive relief. **A-C Reorganization**, 968 F.Supp. at 429. The court reasoned, however, that because those penalties are payable to the United States, and not the plaintiff, compensation could not be their primary purpose. **A-C Reorganization**, 968 F.Supp. at 429. Rather, the major purpose of the civil penalties is deterrence, and therefore the RCRA's citizen suit provision is meant to further the RCRA's "national policy . . . to minimize present and future threat to human health and the environment" through injunction and deterrence. **Meghrig**, 516 U.S. at 486. As such, the court concluded that RCRA citizen suits are equity suits, and the **Cope-Nemkov** rule, meant to bar untimely suits that are really suits at law as opposed to equity, is not applicable. Rather, the court found that no statute of limitations applies to citizen suits for injunctive relief under the RCRA. **A-C Reorganization**, 968 F.Supp. at 429.

Likewise, actions for purely injunctive relief under the CWA and the CAA are also imprescriptible.[7] See **Fresh Air for the East Side, Inc. v. Waste Mgmt. of New York, LLC**, 405 F.Supp.3d 408 (W.D.N.Y. 2019); **Paper, Allied-Industrial, Chem. and Energy Workers Int. Union v. Cont'l Carbon Co.**, 428 F.3d 1285 (10th Cir. 2005).

Louisiana's conservation law was enacted to deal with contaminated soil and groundwater resulting from oil and gas operations throughout the state. After use, earthen pit sites potentially contain various invisible contaminants below the ground, including heavy metals and radioactive substances that pose environmental and health risks. Statewide Order 29-B therefore required that these sites be remediated

[7] The language of the citizen suit provisions in the CWA and the CAA are identical.

to a certain minimum standard upon closure. Citizens have a right to expect contamination-free groundwater and soils, and a concerted, honest cleanup effort from those who benefitted greatly from their communities and surrounding natural resources. See **Wilson v. Amoco**, 989 F.Supp. 1159, 1178 (D. Wyo. 1998.) The unique enforcement mechanism in LSA-R.S. 30:16 empowers citizens to initiate enforcement actions when there exists a present threat to the public and the environment. That only prospective, equitable relief is available under the statute is one characteristic that makes it unique. In light of the unique qualities inherent in enforcement actions under LSA-R.S. 30:16, the intent and purpose of Louisiana's conservation law, and the limited equitable relief available, coupled with the failure of the legislature to provide a specific prescriptive period applicable to LSA-R.S. 30:16 enforcement actions, we find that citizen enforcement actions under LSA-R.S. 30:16 are not subject to liberative prescription. This result promotes the State's interest in the preservation, maintenance, and restoration of its natural resources for the benefit of the public as a whole, ensures enforcement of environmental laws and regulations, and adheres to the intent of the legislature and the policy written into the constitution.

**2. No Cause of Action**

In addition to the exception of prescription, defendants have raised the exception of no cause of action, alleging that LSA-R.S. 30:14 and LSA-R.S. 30:16 apply only to violations involving present, ongoing, or continuous conduct. Defendants allege that they ceased operations on the properties herein years ago, and that Tureau has therefore failed to state a cause of action against them under LSA-R.S. 30:16. As such, defendants argue that the petition should be dismissed, with prejudice.[8]

[8] Defendants' exceptions of no cause of action were not considered by the lower courts. Nevertheless, the issue has been briefed and argued before this court. As such, in the interest of judicial economy, and pursuant to its authority under LSA-C.C.P. articles 927 and 2163, the court

The exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. **Kunath v. Gafford**, 20-1266 (La. 9/30/21), 330 So.3d 161, 166; **Ramey v. DeCaire**, 03-1299, pp. 7-8 (La. 3/19/04), 869 So.2d 114, 118-19. A court's decision on an exception of no cause of action is based solely on the sufficiency of the petition; no evidence may be introduced to support or controvert the exception. LSA-C.C.P. art. 931; **Ramey**, 03-1299 at p. 7, 869 So.2d at 118. Consequently, for the purpose of determining the issues raised by the exception, the well-pleaded facts of the petition must be accepted as true. **Cleco Corp. v. Johnson**, 01-0175, p. 3 (La. 9/18/01), 795 So.2d 302, 304; **Fink v. Bryant**, 01-0987, p. 3 (La. 11/29/01), 801 So.2d 346, 348. The pertinent question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief. **Id.** Every reasonable interpretation must be accorded the language used in the petition in favor of maintaining its sufficiency and affording the plaintiff the opportunity of presenting evidence at trial. **Badeaux v. Sw. Comput. Bureau**, 05-0612, p. 7 (La. 3/17/06), 929 So.2d 1211, 1217. The burden of demonstrating that a petition fails to state a cause of action is on the mover, and a petition should be dismissed for failure to state a cause of action only when it appears beyond doubt that the plaintiff can prove no set of facts in support of any claim which would entitle him to relief. **Fink**, 01-0987 at p. 4, 801 So.2d at 349.

Tureau's original petition alleged that his property has been contaminated as a result of the oil and gas exploration and production activities of the defendants and/or their predecessors in interest. Specifically, the petition alleges that defendants violated various applicable conservation laws and regulations by failing to close and/or properly close unlined earthen pits. The petition further alleges that

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has considered the exceptions of no cause of action as well as the exceptions of prescription.

defendants "are violating Statewide Order 29-B and other regulations and orders of the Louisiana Department of Natural Resources and the Office of Conservation," by failing to remediate the property and contamination therein to the minimum standards required under the law. Specifically, the petition alleges that, "such violations are deemed ongoing violations until the law has been complied with," and that Tureau is entitled to injunctive relief under LSA-R.S. 30:16 "for any and all past or present violations . . . no matter when such violations occurred." Further, the first supplemental and amending petition states that:

> Petitioner alleges that the parties made defendants in this petition are currently violating Statewide Order 29-B and other regulations and orders of the Louisiana Department of Natural Resources and Office of Conservation by allowing contaminant exceedences to remain on the Tureau property and by failing to remediate the Tureau property to the standards set forth [in] Statewide Order 29-B and other applicable regulations and orders. Petitioner herein seeks the following mandatory and prohibitive injunctions: (1) ordering that the defendants named in this petition remediate the environmental damages to the Tureau property caused by oil and gas exploration and production activities to a level that complies with applicable regulations and orders, including, but not limited to, Statewide Order 29-B; and (2) restraining the defendants named in this petition from further violating, or threatening to violate, applicable regulations and orders, including, but not limited to, Statewide Order 29-B.

Under the legal principles and standards of review applicable at this stage of the proceedings, wherein the narrow issue before this court is whether the petition states a cause of action, and taking the allegations of the petition as true, as we must, we are constrained to overrule the exception. See **Global Mktg. Sols., LLC v. Blue Mill Farms, Inc**, 18-0093 (La. App. 1 Cir. 11/6/18), 267 So.3d 96 (reversing the district court's dismissal of a LSA-R.S. 30:16 suit for injunctive relief for failure to state a cause of action, finding that, insofar as the plaintiff alleged that "defendants . . . are violating Statewide Order 29-B . . . by failing to remediate the property," and that said failure to remediate was ongoing, the plaintiff made allegations sufficient

to state a cause of action for injunctive relief under LSA-R.S. 30:16);[9] see also **Rich Land Seed Co. v. BLSW Pleasure Corp.**, 2022 WL 2163824, at *17-20 (W.D. La. 5/31/22) (denying an exception of no cause of action when the petition alleged that unplugged or improperly plugged wells and "open" production storage pits remained on plaintiff's property and represented continuing violations of the conservation laws and regulations for which the plaintiff enjoyed a right to relief under LSA-R.S. 30:16.)

Moreover, insofar as defendants argue that their failure to remediate soil and/or groundwater contamination to the minimum required standards does not, in and of itself, constitute a violation of a conservation law, rule, regulation, or order, we emphasize that this argument goes to the merits of plaintiff's claims. Specifically, whether defendants' actions or inactions constitute a violation of conservation laws, rules, regulations, or orders, is a matter of proof, which the plaintiff is not required to present at the trial of an exception of no cause of action. See **PennEnvironment and Sierra Club v. PPG Industries, Inc.**, 12-342, 964 F.Supp.2d 429 (W.D. Penn. 8/8/13); see also **City of Toledo v. Beazer Materials and Servs., Inc.**, 833 F.Supp. 646 (N.D. Ohio 5/25/93). Likewise, whether plaintiff can successfully prove that defendants are liable under the applicable laws in this case is a matter of proof that goes to the merits of plaintiff's claims. The merits of a claim are to be determined after findings of fact, upon a motion for summary judgment or a trial on the merits, and whether a plaintiff will prevail on the merits is not an appropriate consideration on an exception raising the objection of no cause of action. **Terrebonne Par. Consol Gov't. v. Louisiana Dep't. of Nat. Res.**, 21-0486

[9] In a concurring opinion, Judge Holdridge noted that LSA-R.S. 30:14 and LSA-R.S. 30:16 seemed to be in contradiction insofar as they appear to provide only for a prohibitory injunction restraining a person from continuing a violation or from carrying out a threat in violation of the law, and yet LSA-R.S. 30:16 also provides that the commissioner may obtain a mandatory injunction. **Global Mktg. Sols., LLC**, 267 So.3d at 102.

(La. App. 1 Cir. 12/30/21), 340 So.3d 940, 945; **Bergen Brunswig Drug Co. v. Poulin**, 93-1945 (La. App. 1 Cir. 6/24/94), 639 So.2d 453, 458.

As such, in light of plaintiff's allegations that defendants "are violating" conservation laws, rules, regulations, and/or orders, the exception of no cause of action must be denied.

Nevertheless, notwithstanding the above, we note that **Gwaltney v. Chesepeake Bay Foundation**, 484 U.S. 49 (1987), cited by defendants in support of their interpretation of LSA-R.S. 30:16, is distinguishable from the case herein. Defendants allege that the **Gwaltney** decision stands for the holding that the CWA does not allow suits for "wholly past violations." **Gwaltney**, however, further held that federal jurisdiction *will* attach where citizen plaintiffs make a "good faith allegation of continuous or intermittent violations," and it was on that basis that the Court ultimately upheld the plaintiffs' claims. Recognizing **Gwaltney's** full holding, the district court in **North Carolina Wildlife Federation v. Army Department**, 29 Env't Rep. Cas. (BNA) 1942 (E.D.N.C. 1989), held that CWA violations having persistent effects that are amenable to correction would constitute continuous violations until remedied. Specifically, that court found as follows:

> Treating the failure to take remedial measures as a continuing violation is eminently reasonable. This is because it is not the physical act of discharging dredge wastes itself that leads to the injury giving rise to citizen standing, but the *consequences* of the discharge in terms of lasting environmental degradation. This position finds support in Justice Scalia's concurrence in *Gwaltney,* in which he was joined by Justices Stevens and O'Connor. According to the concurring Justices, the phrase in 33 U.S.C. section 1365(a) "to be in violation," unlike the phrase "to be violating" or "to have committed a violation," suggests "a state rather than an act—the opposite of state of compliance ... When a company has violated an effluent standard or limitation, it remains for purposes of [section 1365(a)] 'in violation' of that standard or limitation so long as it has not put in place remedial measures that clearly eliminate the cause of the violation." *Gwaltney,* 108 S.Ct. at 381.
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> [C]itizen-suits for past discharges which are not susceptible to remedial efforts, due to effective natural dissipation or dispersion, would clearly continue to be barred under *Gwaltney.* Only violations having

> persistent effects that are amenable to correction, would constitute continuing violations, until remedied, under *Gwaltney*.
>
> **North Carolina Wildlife Fed'n**, 29 Env't Rep. Cas. (BNA) at 1944.

The **North Carolina Wildlife Fed'n** court reasoned that public policy supported its decision to treat remediable acts as a continuing violation. Specifically, the court reasoned that barring citizen suits merely because any illegal ditching and drainage of a wetland tract was completed before it might reasonably be discovered would be a powerful incentive for violators to conceal their activities from public and private scrutiny, which would lead to serious problems in public and private enforcement of the CWA. So, too, would be the result if citizen suits under LSA-R.S. 30:16 were barred merely because a regulated entity had completed a violation prior to the filing of the enforcement action.

In any event, we further note that numerous courts have recognized that CWA violations, such as those in **Gwaltney**, are fundamentally distinguishable from the type of violations alleged herein. Specifically, in **Fallowfield Development Corp.**, 1990 WL 52745, at *10-*11 (E. D. Pa. 1990), the court noted that the harm resulting from an illegal discharge under the CWA or the CAA "differs significantly" from the harm that results from a violation of the RCRA, such as an improper disposal of hazardous waste. That court reasoned that, because the damage that occurs when a person discharges a pollutant in violation of an effluent limitation under the CWA is effectively irreversible, little would be gained by allowing a citizen suit in such a case when the alleged violator has come into compliance prior to suit. The same, the court noted, would be equally true for violations of the CAA, wherein the damage is evanescent. Violations such as those at issue in the instant case, however, are vastly different:

> The improper disposal of hazardous waste is considerably different. If a person disposes of hazardous waste on a parcel of property, the hazardous waste remains on that property insidiously infecting the soil and groundwater aquifers. In other words, the violation *continues* until

> the proper disposal procedures are put into effect *or* the hazardous waste is cleaned up. Thus, while the discharge of a pollutant into the water or air normally disperses or dissipates, making cleanup difficult or impossible, the improper disposal of hazardous waste remains a remediable threat.
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> **Fallowfield Dev. Corp.**, at *11.

The **Fallowfield Development Corp.** court further distinguished CWA/CAA violations from RCRA violations on the basis that CWA/CAA violations are often daily violations, while RCRA violations are often singular events. **Fallowfield Dev. Corp.**, at *10. As such, the court reasoned that, although a citizen suit would be an effective means of bringing a continuous or intermittent CWA/CAA violator into compliance, to interpret the RCRA's citizen suit provision to allow an enforcement action only in situations in which an owner or operator is disposing of hazardous waste on a daily basis would virtually read the provision out of the statute entirely. **Fallowfield Dev. Corp.**, at *10. **Fallowfield Development Corp.** therefore concluded that Congress intended to allow RCRA citizen suits for past violations where the effects of the violation remain remediable. **Fallowfield Dev. Corp.**, at *11.

Consistent with the **Fallowfield Development Corp.** holding, a number of federal courts have held that the continued presence of illegally dumped hazardous wastes may constitute a "current violation" of an RCRA regulation or standard, despite the fact that the operator's conduct occurred in the past. See **Scarlett & Associates v. Briarcliff Ctr. Partners, LLC**, 2009 WL 3151098, (N.D. Ga. 2009); **Marrero Hernandez v. Esso Standard Oil Co.**, 597 F.Supp.2d 272, 283 (D.P.R. 2009) (holding that unremedied, migrating contamination is not a wholly past violation); **Cameron v. Peach Cnty.**, 2004 WL 5520003, at *26-*27 (M.D. Ga. 2004) (holding that the continued presence of illegal contamination that remains remedial constitutes a continuing violation, even though the acts of unlawful disposal occurred in the past); **California v. M & P Investments**, 308 F.Supp.2d

1137, 1146-47 (E.D. Cal. 2003) (holding that a continuous violation under RCRA is present where improperly discharged hazardous wastes "continue to exist unremediated" at the contamination site); **Aurora Nat'l Bank v. Tri Star Marketing**, 990 F.Supp. 1020, 1025 (N.D. Ill. 1998) ("Although subsection (a)(1)(A) does not permit a citizen suit for wholly past violations of the statute, the continued presence of illegally dumped materials generally constitutes a 'continuing violation' of the RCRA, which is cognizable under § 6972(a)(1)(A)."") (internal citation omitted); **City of Toledo**, 833 F.Supp. at 656 (holding a valid claim exists against a prior owner under § 6972(a)(1)(A) of the RCRA "as long as no proper disposal procedures are put into effect or as long as the waste has not been cleaned up and the environmental effects remain remediable."); **Gache v. Town of Harrison**, 813 F.Supp. 1037, 1041-42 (S.D.N.Y. 1993) ("[I]mproperly discharged wastes which continue to exist unremediated represent a continuing violation of RCRA."); **Acme Printing Ink Co. v. Menard, Inc.**, 812 F.Supp. 1498, 1512 (E.D. Wisc. 1992) ("RCRA includes in its broad definition of 'disposal' the continuous leaking of hazardous substances . . . Accordingly, leaking of hazardous substances may constitute a continuous or intermittent violation of RCRA."); **Fallowfield Dev. Corp.**, 1990 WL 52745, at *10 ("If a person disposes of hazardous waste on a parcel of property, the hazardous waste remains in that property insidiously infecting the soil and groundwater aquifers. In other words, the violation *continues* until the proper disposal procedures are put into effect *or* the hazardous waste is cleaned up.")

Many of those courts likewise found that the failure to remedy past contamination, and to comply with regulations in connection therewith, can also constitute a continuous violation of the RCRA, particularly when the contamination is shown to be migrating. See **Marrero Hernandez**, 597 F.Supp.2d at 283; **Cameron**, 2004 WL 5520003, at 26-27; **M & P Investments**, 308 F.Supp.2d

at 1146-48; **Aurora Nat'l Bank**, 990 F.Supp. at 1025; **Gache**, 819 F.Supp. at 1041; **Beazer Materials & Servs.**, 833 F.Supp. at 656; **Acme Printing Ink**, 812 F.Supp. at 1512.

Moreover, we are not persuaded by the argument of the defendants that an action seeking to remedy residual harm, or to prevent environmental contamination resulting from past conduct that has already ceased, is beyond the scope of LSA-R.S. 30:14 and LSA-R.S. 30:16 on the basis that the clear and unambiguous language therein definitively establishes that only violations involving present, ongoing conduct, or threatened future conduct, gives rise to a citizen suit under LSA-R.S. 30:16. Specifically, under the rules of statutory interpretation, courts are bound, if possible, to give effect to all parts of a statute and to construe no sentence, clause, or word as meaningless and surplusage if a construction giving force to, and preserving, all words can legitimately be found. **Langlois v. East Baton Rouge Par. Sch. Bd.**, 99-2007 (La. 5/16/00), 761 So.2d 504, 507. Courts also have a duty to interpret statutes in relation to each other and adopt a construction that harmonizes and reconciles the statute with other provisions dealing with the same subject matter whenever possible. LSA-C.C. art. 13; **City of New Orleans v. Louisiana Assessors' Retirement and Relief Fund**, 05-2548, 986 So.2d 1 (La. 10/1/07). Further, because the object of the court in construing a statute is to ascertain the legislative intent, where a literal interpretation would produce absurd consequences, the letter must give way to the spirit of the law and the statute construed so as to produce a reasonable result. **First Nat'l Bank of Boston v. Beckwith Mach. Co.**, 94-2065 (La. 2/20/95), 650 So.2d 1148, 1153.

"Whenever it appears that a person is violating or is threatening to violate" a law, rule, order, or regulation under conservation law, LSA-R.S. 30:14 authorizes the Commissioner to "bring suit to restrain that person from continuing the violation or from carrying out the threat." The statute further states that venue shall be in the

parish "where the violation is alleged to *have occurred* or is threatened." (Emphasis added.) The last quoted passage from LSA-R.S. 30:14, stated in the present perfect tense, therefore clearly implies violations that have already occurred.[10] The legislature could have easily constructed this provision to provide for a proper venue in the parish "where the violation is allegedly occurring or is threatened," but it did not. We further note that the statute specifically authorizes the Commissioner to "obtain injunctions, prohibitory and mandatory . . . ." Reading the provisions of the statute as a whole, we decline to conclude that the statutory language excludes all violations committed prior to the date the suit was filed, regardless of whether those violations have resulted in a present, remediable harm to the public and/or the environment. Reading these provisions together so as not to render the statute contradictory, we conclude that the statute is not strictly limited to violations committed on or after the date of the filing of the petition. See **Gache**, 813 F.Supp. 1037. Specifically, the legislature's use of both the present and the present perfect tense, coupled with the explicit authority to seek mandatory injunctive relief, and the absence of any language limiting or distinguishing the "violation" referenced therein, all appear to contradict the interpretation urged by defendants.

We further note that, notwithstanding whether a citizen suit for past violations is authorized by the statute, there would nevertheless remain the issue of whether, as alleged in the supplemental petition, defendants are currently in violation of conservation law by failing to remediate as required by the applicable rules, regulations, or orders. Citing **Marin**, defendants allege that this court has previously held that the failure to remediate contamination caused by past conduct does not constitute a continuing violation. However, as previously noted herein, the instant regulatory enforcement action is not an action in tort. Defendants have failed to cite

[10] According to Grammerly, "[t]he present perfect tense refers to an action or state that either occurred at an indefinite time in the past (e.g., we have talked before) or began in the past and continued to the present time (e.g., he has grown impatient over the last hour)."

a single case in which a Louisiana court has applied a "continuing tort" analysis in the context of an environmental regulatory enforcement action. As such, the cases cited by defendants are not applicable.

We further note that the defendants concede, and this court has previously recognized, that that the Commissioner has the authority to regulate discontinued past conduct.[11] see **Magnolia Coal Terminal v. Phillips Oil Co.**, 576 So.2d 475 (La. 1991) (wherein this court found that the Commissioner was empowered to order the plugging of a well that had been leaking for 26 years, as well as the cleaning of the site, despite the fact that the well was no longer in use, but continued to present a serious environmental hazard); See also **Rich Land Seed Co. v. BLSW Pleasure Corp.**, 2022 WL 2163824 (W.D. La. 2022), report and recommendation adopted, 2022 WL 2161940 (W.D. La. 2022) (wherein the court, relying on **Magnolia Coal**, held that "it is clear that the legislature intended for the Commissioner to enact regulations that applied to prior wells and oilfield operations that continued to cause environmental concerns . . . . Accordingly, this court finds that Rich Land has stated a plausible claim for relief under Louisiana Revised Statutes §30:16.")

Nor do we find any merit to the defendants' argument that interpreting LSA-R.S. 30:14 and/or LSA-R.S. 30:16 to apply to all violations would "undermine" the authority of the Commissioner. Specifically, defendants argue that if citizen suits are not limited to violations involving present or future conduct, the use of the mandatory "shall" in LSA-R.S. 30:14 would require that the Commissioner seek

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[11] With regard to LSA-R.S. 30:6(G), which gives the Commissioner the authority to issue compliance orders, defendants allege that "[t]his provision provides a procedure for the Commissioner to remedy violations outside the judicial system, even if the offending conduct occurred in the past." (Defendants' Brief, pp. 17-18.) LSA-R.S. 30:6(G) states, in pertinent part, that:

> Additionally, upon determining that a violation of this Chapter or the regulations adopted hereunder has occurred, the commissioner may issue an order requiring compliance. Any such order shall state, with reasonable specificity, the nature of the violation, any cessation of activities or affirmative operations required to achieve compliance, and a time limit within which compliance with the order must be achieved.

judicial enforcement of all violations, thereby removing his ability to use discretion in determining how to enforce conservation laws, rules, regulations, and orders. Specifically, defendants argue that such an interpretation would result in citizen suits no longer being supplemental, and instead they would prime the Commissioner's authority. We note, however, that the mere existence of LSA-R.S. 30:16 contradicts defendants' arguments. Specifically, if the legislature intended for LSA-R.S. 30:14 to act as an absolute mandate requiring the Commissioner to seek judicial enforcement of every violation, there would be no need for a citizen suit provision at all. Citizen suits are intended to serve as protection from administrative abuses and/or the results of an overburdened and overworked system. They are designed for the purpose of ensuring the safety of the public and the environment. Pursuant to LSA-R.S. 30:16, when a citizen is adversely affected by a violation, and the Commissioner, after receiving notice thereof, fails to seek injunctive relief, the citizen is authorized to pursue said relief in his place. The notice, therefore, does not compel the Commissioner to act, but rather gives him the opportunity to do so. If he chooses not to bring suit, then the citizen may. A citizen who pursues injunctive relief under LSA-R.S. 30:16 bears the risk and the expense of proving that a harm to the public and/or the environment exists. It is only if the citizen proves that injunctive relief is necessary that the Commissioner is then substituted as the party plaintiff. We find no merit to the defendants' argument that upholding Tureau's claim would result in an influx of frivolous lawsuits, as we find that placing the burden of litigation on the citizen is sufficient to avoid frivolous suits.

**CONCLUSION**

As previously noted, environmental regulatory statutes are unique and rely heavily on self-reporting and the willingness of the regulated industry to voluntarily comply with the applicable laws and regulations. It is for precisely this reason that

citizen suits are a necessary and integral component of environmental regulatory statutes in particular.

Pursuant to LSA-R.S. 30:16, upon providing the requisite notice, any person in interest adversely affected by a violation of conservation laws, rules, regulations, or orders, may file suit for injunctive relief. The petition at issue herein alleges that the defendants have violated conservation laws and/or regulations by failing to close and/or properly close unlined earthen pits, and further, that the defendants are violating applicable rules and regulations by failing to remediate the property. Taking these allegations as true, as we are required to do, the petition alleges facts sufficient to state a cause of action for injunctive relief pursuant to LSA-R.S. 30:16.

**DECREE**

Accordingly, the ruling of the First Circuit on the exceptions of prescription is affirmed, judgment is rendered overruling the exceptions of no cause of action, and this matter is remanded for further proceedings consistent with the rulings herein.

**AFFIRMED, RENDERED, and REMANDED**.

# SUPREME COURT OF LOUISIANA

**NO. 2021-C-00856**

**STATE OF LOUISIANA, EX REL. JUSTIN DALE TUREAU**

**VS.**

**BEPCO, L.P., BOPCO, LLC, CHEVRON U.S.A. INC., CHISOLM TRAIL VENTURES, L.P., AND HESS CORPORATION, A DELAWARE CORPORATION**

*On Writ of Certiorari to the Court of Appeal, First Circuit,*
*Parish of East Baton Rouge*

**WEIMER, C.J.**, additionally concurring.

Under the system of checks and balances embodied in the constitution, the roles of the legislative and judicial branches are established.

The obligation of the judiciary is to apply the law as written by the legislature. It is not the prerogative of the judiciary to disregard the language of legislation or to reweigh balances of interests and policy considerations already struck by the legislature. **Soloco, Inc. v. Dupree**, 97-1256, p. 7 (La. 1/21/98), 707 So.2d 12, 16 (citing **Daigle v. Clemco Industries**, 613 So.2d 619 (La. 1993)).

Now that this court has evaluated and interpreted the language of the statute enacted by the legislature, it is up to the legislature to evaluate the language in light of this decision, evaluate the policy ramifications, and consider whether the law needs to be changed within the limitations constitutionally established.

**SUPREME COURT OF LOUISIANA**

**No. 2021-C-00856**

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**BEPCO, L.P., BOPCO, LLC, CHEVRON U.S.A. INC., CHISOLM TRAIL VENTURES, L.P., AND HESS CORPORATION, A DELAWARE CORPORATION**

On Writ of Certiorari to the Court of Appeal, First Circuit, Parish of East Baton Rouge

**CRAIN, J. dissents and assigns reasons.**

The majority recognizes an imprescriptible remediation claim under Louisiana Revised Statutes 30:16. It does so to allow for remediation of present day damage from past oil and gas activities for a landowner whose earlier suit for remediation and non-remediation damages was dismissed pursuant to *Eagle Pipe and Supply, Inc. v. Amerada Hess Corporation*, 10-2267 (La. 10/25/11), 79 So.3d 246.[1, 2] I respectfully disagree.

The threshold determination in every case is whether the petition is legally sufficient to afford the plaintiff a remedy in law.[3] Defendants' filed exceptions of

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[1] The plaintiff filed a legacy lawsuit on July 23, 2013, alleging his land was contaminated by oil and gas drilling and exploration operations on neighboring property dating back to the 1930s. *Tureau v. 2-H Inc.*, No. 2013-09539 (12th J.D.C., Avoyelles Parish). That suit was dismissed on summary judgment under the subsequent purchaser doctrine recognized in *Eagle Pipe*. *Tureau v. 2-H Inc.*, No. 1:13-CV-2969, 2014 WL 12701025 (W.D. La. Mar. 14, 2014). Now, four years after that dismissal, the plaintiff brings a citizens suit under Louisiana Revised Statutes 30:16 seeking injunctive relief for the same conduct by the same defendants.

[2] The plaintiff named other defendants in the 2013 lawsuit. Those defendants were also dismissed pursuant to the subsequent purchaser doctrine. As in the instant case, the plaintiff sued them again in 2017 under Louisiana Revised Statutes 30:16. The defendants filed an exception of *res judicata*, arguing the citizen suit is precluded because the 2013 lawsuit involves the same parties and the same transaction or occurrence. That writ application is currently pending before this court, and I offer no opinion on that peremptory exception. My dissent is limited only to the finding that Louisiana Revised Statutes 30:16 does not afford this plaintiff a remedy based on the facts alleged in this petition.

[3] *See Fink v. Bryant*, 01-0987, p. 3 (La. 11/28/01), 801 So. 2d 346, 348 (The peremptory exception of no cause of action tests the legal sufficiency of the petition by determining whether the plaintiff is afforded a remedy in law based on the facts alleged in the pleading.)

no cause of actions that were not considered by the lower courts. However, pursuant to special briefing instructions and arguments, this issue was addressed by the parties and is properly before this court.[4] For the following reasons, I do not believe the plaintiff has asserted facts affording a remedy under Louisiana Revised Statutes 30:16.

While citizen suits are important to enforce environmental regulations when the Commissioner fails to act, the majority incorrectly finds that a citizen suit is available to remedy *past* acts. In fact, the statute only covers current unlawful operations with continuing damage. Here, the oil companies long ago ceased operations on the property. A citizen suit cannot, nor was it ever intended to, allow an imprescriptible Act 312 remediation against companies who ceased operations decades, if not a century, before. Rather, Louisiana Revised Statutes 30:16 only applies to current, ongoing damage-causing operations. This is why prohibitory and mandatory injunctions are the available statutory remedies as they prohibit present and future activity and allow for immediate related cleanup.

The plaintiff seeks to hold the defendants "liable for damages caused by defendants' oil and gas exploration and production related to activities that substantially *harmed* plaintiffs, plaintiffs' land, and plaintiffs' legal interest." The plaintiff alleges "[d]efendants knew for many years that they were disposing, storing, discharging, and otherwise releasing toxic poisons and pollutants onto and into the ground, groundwaters, and surface waters on or near plaintiff[']s property."

As stated in *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep't of Econ. Dev.*, 10-0193 (La. 1/19/11), 56 So. 3d 181, 187-88, "The starting point in the interpretation of any statute is the language of the statute itself. When a law is

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[4] The order for supplemental briefing instructed the parties to address whether Tureau's petition states a cause of action under La. R.S. 30:16, including but not limited to whether La. R.S. 30:14, *et seq.* requires ongoing conduct (not merely ongoing harm resulting from past conduct)."

clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."

Louisiana Revised Statutes 30:14 states, in pertinent part:

> Whenever it appears that a person *is* violating or *is* threatening to violate a law of this state with respect to the conservation of oil or gas, or both, or a provision of this Chapter, or a rule, regulation, or order made thereunder, the commissioner shall bring suit to restrain that person from *continuing* the violation or from carrying out the threat. In this suit, the commissioner may obtain injunctions, prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts warrant, including, when appropriate, injunctions restraining a person from moving or disposing of illegal oil, illegal gas, or an illegal product. Any or all of these illegal commodities may, in the court's discretion, be ordered impounded or placed under the control of an agent appointed by the court.

(Emphasis added.) Louisiana Revised Statutes 30:16 states:

> If the commissioner fails to bring suit within *ten* days to restrain a violation as provided in La. R.S. 30:14, any person in interest adversely affected by the violation who has notified the commissioner in writing of the violation or threat thereof and has requested the commissioner to sue, may bring suit to prevent any or further violations, in the district court of any parish in which the commissioner could have brought suit. If the court holds that injunctive relief should be granted, the commissioner shall be made a party and shall be substituted for the person who brought the suit and the injunction shall be issued as if the commissioner had at all times been the complaining party.

These statutes contemplate current unlawful operations. The rights granted, first to the Commissioner, then to a citizen, to sue for injunctive relief apply to current, ongoing violations, not past ones. Reference to a person who "is violating" or "is threatening to violate" an environmental law, coupled with the remedy of "restraining that person from continuing the violation or from carrying out the threat" evidences conduct that must be ceased or prevented. The operative phrases "is violating" and "is threatening to violate" refer to an act ("violating"), not a state of being ("in violation"). The use of the present tense to describe conduct that violates conservation laws, as opposed to simply being in a state of noncompliance, evidences a legislative intent to limit these suits to defendants that are presently

engaging in conduct that is violating, or are presently threatening to violate, conservation laws. Further, the words "prevent' and "refrain" suggest stopping an ongoing act, not remedying the consequences of an act that ceased long ago.

In *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 108 S. Ct. 376, 98 L. Ed. 2d 306 (1987), the United States Supreme Court was tasked with determining whether the citizen suit provision of the Clean Water Act, which allows a private citizen to sue any person alleged "to be in violation" of the Act, requires the defendant to be violating the Act at the time of the suit. The court held the citizen suit does not apply to "wholly past violations." *Id.* at 60. It reasoned:

> The most natural reading of "to be in violation" is a requirement that citizen-plaintiffs allege a state of either continuous or intermittent violation–that is, a reasonable likelihood that a past polluter will continue to pollute in the future. Congress could have phrased its requirement in language that looked to the past ("to have violated"), but it did not choose this readily available option.

*Id.* at 57. The court noted the Act's use of "present tense strongly suggests the harm sought to be addressed by the citizen suit lies in the present or the future, not in the past." *Id.* at 59.

Similarly, Louisiana Revised Statutes 30:14 and 30:16 do not apply to "wholly past violations." Not only is this conclusion evidenced by the present tense language of the statute, it is further supported by the statute only allowing the Commissioner ten days to sue before a citizen can file suit. The urgency denotes current violations. As with the language of the Clean Water Act, if the legislature wished to address past illegal conduct, it could have included past tense language. They did just that in Louisiana Revised Statutes 30:6(G) by stating the Commissioner may impose a civil penalty when "a violation of this Chapter . . . *has occurred*." *See also* Louisiana Revised Statutes 30:542(C) and 30:543 (authorizing the Commissioner and, in its failure, a citizen to sue when a person "has engaged, is engaged, or is about to engage in any act constituting a violation" of the Natural

Resources and Energy Act.) The purpose of such suits is to enjoin conduct and enforce compliance. Accordingly, when the legislature intends to permit suits to enforce compliance with regulatory laws for past conduct, it has shown that it knows how to do so.

Taking the allegations of the petition as true, the majority cites to the plaintiff's allegations that the defendants "are violating" conservation laws, rules, regulations, and/or orders to find that, as alleged, the petition is sufficient to survive an exception of no cause of action. Here, while the alleged contamination may still exist, there is no allegation that the cause of the damage is ongoing. In *Hogg v. Chevron USA, Inc.*, 09-2632 (La. 7/6/10), 45 So. 3d 991, 1002-03, this court explained:

> In cases involving damage to immovable property based on La. C.C. art. 3493, Louisiana jurisprudence draws a distinction between damages caused by continuous, and those caused by discontinuous, operating causes:
>
> > When the operating cause of the injury is continuous, giving rise to successive damages, prescription begins to run from the day the damage was completed and the owner acquired, or should have acquired, knowledge of the damage. *See South Central Bell Telephone Co. v. Texaco, Inc.*, 418 So.2d 531 (La. 1982), and cases cited therein. When the operating cause of the injury is discontinuous, there is a multiplicity of causes of action and of corresponding prescriptive periods. Prescription is completed as to each injury, and the corresponding action is barred, upon the passage of one year from the day the owner acquired, or should have acquired, knowledge of the damage. See A.N. Yiannopoulos, Predial Servitudes, § 63 (1982).
>
> Official Revision Comments (c) to La. C.C. art. 3493 (1983). The distinction between continuous and discontinuous operating causes was clarified by this court in *Crump v. Sabine River Authority,* 98-2326 (La.6/29/99), 737 So.2d 720, a property damage case, in the context of discussing continuing torts in general. Therein, we explained that "[a] continuing tort is occasioned by [continual] unlawful acts, not the continuation of the ill effects of an original, wrongful act." *Crump,* 98–2326 at 9, 737 So.2d at 728. Further, we point out that "[t]he continuous conduct contemplated in a continuing tort must be tortious and must be the operating cause of the injury." *Crump,* 98-2326 at 11, 737 So.2d at 729 n. 7. The inquiry is essentially a conduct-based one, asking whether

> the tortfeasor perpetuates the injury through overt, persistent, and ongoing acts.

The plaintiff does not allege the operating cause of injury is continuous, only that damaging effects continue. (*Contrast* La. R.S. 30:6(F), which allows an interested person a hearing before the Commissioner to address *past* violations that have not been remedied, including the issuance of regulatory compliance orders). Rather, the petition alleges past conduct and a present failure to remediate damaging effects caused by that conduct. Today's failure to clean up the lingering effects of yesterday's conduct is not sufficient to change its temporal nature from past to present. Upon the allegations of the petition, Louisiana Revised Statutes 30:16 does not afford the plaintiff a remedy under this statute.

I further disagree with the majority's conclusion that a citizen suit "turn[s] over to private citizens the function of enforcing the law, giving to those citizens the ability to act in a manner normally reserved to the government." The Commissioner's authority is derived from Louisiana Revised Statutes 30:4, which broadly grants it the power to "enforce effectively the . . . laws relating to the conservation of oil or gas." Louisiana Revised Statutes 30:16 does not grant a private citizen powers that expressly and solely belong to the Commissioner, especially the power of enforcement. Rather, it grants "any person in interest adversely affected" by a violation judicial review of the Commissioner's decision not to seek injunctive relief. If the person had the same rights as the Commissioner, it would be unnecessary to later substitute the Commissioner for the person who brought suit. As noted in *Gwaltney*, 484 U.S. 60, "The bar on citizen suits when governmental enforcement action is under way suggests that the citizen suit is meant to supplement rather than to supplant governmental action. . . . Permitting citizen suits for wholly past violations of the Act could undermine the supplementary role envisioned for the citizen suit." In the same way, if Louisiana Revised Statutes 30:16

is used to correct past violations that the Commissioner chooses to forego, the Commissioner's discretion and use of state resources will be "curtailed" and intruded upon. *Id.*

Because I find Louisiana Revised Statutes 30:16 applies only to current conduct, it does not matter that the statute may be imprescriptible. If, as a threshold matter, ongoing acts are required to trigger the statute's applicability, the staleness meant to be prevented by laws on prescription ceases to be a concern. As long as there is an actor presently violating or threating to violate the conservation laws, suits sought to stop those actions and enforce related cleanup are timely.

For these reasons, I respectfully dissent.