

Regular Session, 2012

HOUSE BILL NO. 463

BY REPRESENTATIVE ABRAMSON

CIVIL/PROCEDURE: Provides relative to pleadings and discovery in certain civil actions

1 AN ACT

2 To enact Code of Civil Procedure Articles 466, 1095, 1422.2, and 1468.1, relative to
3 pleadings and discovery in certain civil actions; to provide for the joinder of certain
4 parties; to provided for intervention; to provide for procedures and effects of
5 admissions of responsibility; to provide for notice; to provide for admissibility of
6 certain evidence; to provide for the pleading of alternative remedies or damages; and
7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Civil Procedure Articles 466, 1095, 1422.2, and 1468.1 are
10 hereby enacted to read as follows:

11 Art. 466. Permissive joinder in actions for environmental damages

12 A plaintiff or any defendant may seek the joinder of any party alleged to be
13 responsible for environmental damages arising from activities subject to the
14 jurisdiction of the Department of Natural Resources, office of conservation. Such
15 joinder shall be sought within one hundred twenty days of an original or amended
16 petition making a judicial demand alleging environmental damage, or within one
17 hundred twenty days after July 1, 2012, for suits filed prior to that date.

18 * * *

1 Art. 1095. Intervention of third person in actions for environmental damages

2 A third person having an interest may intervene in a pending action to
 3 enforce a right related to a judicial demand alleging environmental damage arising
 4 from activities subject to the jurisdiction of the Department of Natural Resources,
 5 office of conservation. Such intervention shall be within one hundred twenty days
 6 of an original or amended petition making a judicial demand alleging environmental
 7 damage, or within one hundred twenty days after July 1, 2012, for suits filed prior
 8 to that date.

9 * * *

10 Art. 1422.2. Scope of discovery; required notice and admissibility of testing of
 11 contamination in actions for environmental damages

12 Evidence of contamination in actions for environmental damages arising
 13 from activities subject to the jurisdiction of the Department of Natural Resources,
 14 office of conservation, may be submitted to the court only if proper notice has been
 15 given by the party testing the alleged contamination prior to the testing of the alleged
 16 contamination. Proper notice shall be given at least thirty days prior to the
 17 commencement of the testing, shall be issued by registered mail, and shall be given
 18 to all parties to the action, the court, and the department. Any evidence of
 19 contamination submitted with the original pleadings shall be admissible in court.
 20 Any evidence of contamination submitted to the court prior to July 1, 2012, shall be
 21 admissible in court.

22 * * *

23 Art. 1468.1. Admissions of fact in actions for environmental damages

24 A. A party to an action alleging environmental damage arising from
 25 activities subject to the jurisdiction of the Department of Natural Resources, office
 26 of conservation, may admit responsibility for environmental damage and shall give
 27 the court and the department notice of the admission after the expiration of the

1 delays for the joinder of parties and for intervention of third parties provided for in
2 Articles 466 and 1095.

3 B. Upon receipt by the department of an admission of responsibility pursuant
4 to Paragraph A of this Article by any party or notice of the determination by the
5 finder of fact that environmental damage exists and determination of the party who
6 caused the damage, the department shall issue notice, personal and public, of such
7 admission or determination to all current and past operators of record, insofar as
8 practicable, based on the records of the department. Personal notice shall be given
9 by certified mail, return receipt requested. Public notice shall be sufficient if it
10 contains a description of the property, field, and section in dispute and the caption
11 of the original or amended petition alleging environmental damage. A full copy of
12 the petition shall be made available for public inspection in the offices of the
13 department and on the website of the department. The notice provided for in this
14 Paragraph shall constitute judicial advertisement and legal notice as provided by R.S.
15 43:200 et seq.

16 C. Upon receipt of the admission of responsibility or the determination by
17 the finder of fact of a party causing environmental damage, the court shall, without
18 undue delay, and in no case longer than fourteen days, refer the development and
19 approval of the most feasible plan of remediation to the department. The department
20 shall order the party or parties who admit responsibility or whom the finder of fact
21 finds legally responsible for the damage to develop a plan or submittal for the
22 evaluation or remediation to applicable standards of the contamination that resulted
23 in the environmental damage. The department shall order that the plan be developed
24 and submitted to the department and the court within a time that the department
25 determines is reasonable and shall allow the plaintiff or any other interested party at
26 least thirty days from the date each plan or submittal was made to the department to
27 review the plan or submittal and provide to the department an alternative plan,
28 comment, or other response. Any plan or submittal shall include an estimate of the
29 cost to implement the plan. The department shall consider any plan, comment, or

1 response provided timely by any interested party. The department shall submit to
2 the court a schedule of estimated costs for review of the plans or submittals of the
3 parties by the department, and the court shall require the party admitting
4 responsibility or the party found legally responsible by the finder of fact to deposit
5 in the registry of the court sufficient funds to pay the cost of the department's review
6 of the plans or submittals. When any party has admitted responsibility within one
7 hundred eighty days after the expiration of the delay for the joinder of parties as
8 provided by Paragraph A of this Article, the court shall not proceed to a trial of any
9 claim until after a plan to evaluate and remediate the environmental damage,
10 approved by the department, has been submitted to the court. Parties may proceed
11 to the pretrial process during the delay to trial, which shall include but is not limited
12 to pretrial motions and discovery.

13 D. An admission of responsibility pursuant to Paragraph A of this Article
14 shall be an admission of responsibility solely for purposes of the evaluation and
15 remediation to applicable regulatory standards of the contamination that resulted in
16 the environmental damage and shall not be construed as an admission of liability, nor
17 shall such admission be treated by the court as a waiver of any rights or defenses,
18 and shall be admissible in court.

19 E. This Article shall not preclude an owner of land from pursuing a judicial
20 remedy or receiving a judicial award for private claims suffered as a result of
21 environmental damage, except as otherwise provided in this Article. Nor shall it
22 preclude a judgment ordering damages for or implementation of additional
23 remediation in excess of the requirements of the plan adopted by the court pursuant
24 to this Article as may be required in accordance with the terms of an express
25 contractual provision; however, any plan of remediation approved by the department
26 shall be admissible as evidence in any action brought by the claimant in a court of
27 law. The provisions of this Article, including any admissions made pursuant to this
28 Article, shall be published to the jury. Any award granted in connection with the
29 judgment for additional remediation is not required to be paid into the registry of the

1 court. This Article shall not be interpreted to create any cause of action or to impose
 2 additional implied obligations under the Mineral Code or arising out of a mineral
 3 lease.

4 Section 2. This Act shall become effective on July 1, 2012; if vetoed by the governor
 5 and subsequently approved by the legislature, this Act shall become effective on July 1,
 6 2012, or on the day following such approval by the legislature, whichever is later.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Abramson

HB No. 463

Abstract: Provides procedures for civil actions for the remediation of environmental damages, for the joinder and intervention of parties, for the development of remediation plans, and for the admissibility of evidence.

Proposed law provides that the plaintiff or any defendant may seek the joinder of any party alleged to be responsible for environmental damage arising from activities subject to the jurisdiction of Dept. of Natural Resources (DNR), office of conservation.

Proposed law requires that joinder shall be sought within 120 days of an original or amended petition making a judicial demand alleging environmental damage, or with 120 days after July 1, 2012, for suits filed prior to that date.

Proposed law authorizes a third person having an interest to intervene in a pending action, but requires the intervention to be within 120 days of an original or amended petition making a judicial demand alleging environmental damage, or within 120 days after July 1, 2012, for suits filed prior to that date.

Proposed law authorizes evidence of contamination to be submitted to the court only if notice, by registered mail, has been given 30 days prior to the testing of the alleged contamination.

Proposed law provides that any evidence of contamination submitted with the original pleadings shall be admissible in court and that any evidence of contamination submitted to the court prior to July 1, 2012, shall be admissible in court.

Proposed law provides that a party to the action may admit responsibility for environmental damage and that the party shall give the court and DNR notice of the admission after the expiration of the delays for the joinder of parties and for intervention of third parties.

Proposed law provides that upon receipt by DNR of an admission of responsibility by any party or notice of a finder of fact's determination that environmental damage exists and determination of the party who caused the damage, the department shall issue notice, personal and public, of such admission or determination to all current and past operators of record, based on the records of DNR.

Proposed law provides that personal notice shall be given by certified mail, return receipt requested, and that public notice shall be sufficient if it contains a description of the

property, field, and section in dispute, and the caption of the original or amended petition alleging environmental damage.

Proposed law requires that a full copy of the petition shall be made available for public inspection in the offices of DNR and on the website of DNR, which shall constitute judicial advertisement and legal notice.

Proposed law provides that upon receipt of the admission of responsibility or the fact finder's determination of a party causing environmental damage, the court shall, within 14 days, refer the development and approval of the most feasible plan to DNR.

Proposed law provides that DNR shall order a party admitting responsibility or whom the finder of fact finds legally responsible to develop a plan for evaluation, and that the plan be developed and submitted to the department and the court within a time that the department determines is reasonable, and to provide to the department an alternative plan, comment, or other response.

Proposed law requires any plan submitted to include an estimate of the cost to implement the plan.

Proposed law provides that when any party has admitted responsibility within 180 days after the expiration of the delay for the joinder of parties, the court shall not proceed to a trial of any claim until after a plan to evaluate and remediate the environmental damage, approved by DNR, has been submitted to the court.

Proposed law provides that parties may proceed to the pretrial process during the delay to trial, which includes pretrial motions and discovery.

Proposed law provides that an admission of responsibility shall be an admission solely for purposes of the evaluation and remediation to applicable regulatory standards of the contamination that resulted in the environmental damage and shall not be construed as an admission of liability, nor shall such admission be treated by the court as a waiver of any rights or defenses, and shall be admissible in court.

Present law shall not preclude an owner of land from pursuing a judicial remedy or receiving a judicial award for private claims suffered as a result of environmental damage, except as otherwise provided by present law, nor shall it preclude a judgment ordering damages for or implementation of additional remediation in excess of the requirements of the plan adopted by the court as may be required in accordance with the terms of an express contractual provision.

Proposed law provides that any plan or remediation approved by DNR shall be admissible as evidence in any action brought by the claimant in a court of law and that the provisions of proposed law, including any admissions, shall be published to the jury.

Effective July 1, 2012.

(Adds C.C.P. Arts. 466, 1095, 1422.2, and 1468.1)