

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

CIVIL/PROCEDURE: Provides relative to admissions of liability for environmental damage.

DIGEST

Proposed law provides that upon the request of any party in any civil action alleging environmental damage, or by the department, the court shall direct the attorneys for the parties to appear before the court to develop an environmental management order, which will authorize all parties to access the property allegedly impacted to perform inspections and environmental testing. Further provides that the order shall require that all test results be submitted to all parties and the department within 30 days of receipt thereof. Proposed law provides that failure by a party to provide the results of testing to the other parties shall preclude that party from admitting those results into evidence in the civil action.

Proposed law provides for the contents of the environmental management order.

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

Proposed law provides that upon the expiration of the delay in which a party may file a limited admission, and if one or more of the defendants have made a timely limited admission, the court shall refer the matter to the department to conduct a public hearing to approve or structure a plan which the department determines to be the most feasible plan.

Proposed law provides that the limited admission, the plan approved by the department, and all written comments provided by the agencies will be admissible subject to the C.E. Articles 702 through 705 and C.C.P. Art. 1425 as evidence in any action.

Proposed law provides that at any time after the filing of a civil action for environmental damage and, absent good cause shown, no later than 90 days after the completion of the environmental testing set forth in the environmental management order, any party may make a limited admission by filing the same into the record of the court proceeding.

Proposed law provides that any other party who intends to make a limited admission for the same or any other environmental damage must file the same into the record of the court proceeding within 60 days of the filing of the first limited admission by another party. Further provides that any limited admissions filed by another party after the first limited admission is filed must be filed no later than 90 days following the completion of the environmental testing set forth in the environmental management order.

Proposed law provides that the party making a limited admission must deposit with the department sufficient funds, including an initial amount of \$100,000, to cover the cost of the department's review of the plans or submittals. Further provides for the use of these funds.

Proposed law provides that within 30 days of the department's filing of the plan, the party admitting responsibility for implementing the most feasible plan shall reimburse the plaintiff for those costs which the court determines to be recoverable.

Proposed law provides that the provisions of proposed law will not establish primary jurisdiction with DNR.

Provides that the provisions of proposed law will not apply to any case in which the court on or before May 15, 2012, has issued or signed an order setting the case for trial, regardless of whether such trial setting is continued.

(Adds C.C.P. Art. 1552 and 1563)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Added provision requiring court to refer matters to DNR within 30 days of an admission of responsibility for a determination of the most feasible plan to evaluate or remediate environmental damage.
2. Made an admission of responsibility admissible as evidence in any action.
3. Required the party admitting responsibility to fund the department's review of the plan, including the cost of holding a public hearing.
4. Required a party admitting responsibility to reimburse the plaintiff those costs which the court determines are recoverable under R.S. 30:29(E)(1) within 30 days of the department filing the plan.

House Floor Amendments to the engrossed bill.

1. Added provision specifying that an admission of responsibility and the plan approved by the department shall be admissible in accordance with C.E. Arts. 702 through 705 and C.C.P. Art. 1425.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Natural Resources to the reengrossed bill

1. Provides relative to the procedures and requirements of environmental management orders and limited admission of liability in environmental damage lawsuits.