

Regular Session, 2012

HOUSE BILL NO. 460

BY REPRESENTATIVE ABRAMSON

CIVIL/PROCEDURE: Provides civil procedures for the remediation of oilfield sites

1 AN ACT

2 To amend and reenact R.S. 30:29(C)(1) and (H), relative to the evaluation and remediation
3 of oilfield sites and exploration and production sites; to provide for the evaluation
4 and remediation of certain sites without admitting certain liability; to provide for the
5 joinder of parties; to provide for intervention; to provide for notice; to provide for
6 the approval and review of the plan to evaluate or remediate; and to provide for
7 related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 30:29(C)(1) and (H) are hereby amended and reenacted to read as
10 follows:

11 §29. Remediation of oilfield sites and exploration and production sites

12 * * *

13 C.(1) ~~If at any time during the proceeding a party admits liability for~~
14 ~~environmental damage or the finder of fact determines that environmental damage~~
15 ~~exists and determines the party or parties who caused the damage or who are~~
16 ~~otherwise legally responsible therefor, the court~~ (a)(i) The plaintiff or any defendant
17 may seek the joinder of any party alleged to be responsible for environmental
18 damage arising from activities subject to the jurisdiction of the Department of
19 Natural Resources, office of conservation. Notwithstanding that the provisions of
20 the Code of Civil Procedure provide for no time delays for joinder, such joinder shall
21 be sought within one hundred twenty days of an original or amended petition making

1 a judicial demand alleging environmental damage, or within one hundred twenty
2 days after July 1, 2012, for suits filed before that date.

3 (ii) A third person having an interest may intervene in a pending action to
4 enforce a right related to a judicial demand alleging environmental damage arising
5 from activities subject to the jurisdiction of the Department of Natural Resources,
6 office of conservation. Notwithstanding that the provisions of the Code of Civil
7 Procedure provide for no time delays for intervention, such intervention shall be
8 within one hundred twenty days of an original or amended petition making a judicial
9 demand alleging environmental damage, or within one hundred twenty days after
10 July 1, 2012, for suits filed before that date.

11 (iii) Evidence of contamination may be submitted to the court only if proper
12 notice has been given by the party testing the alleged contamination prior to the
13 testing of the alleged contamination. Proper notice shall be given at least thirty days
14 prior to the commencement of the testing, shall be issued by registered mail, and
15 shall be given to all parties to the action, the court, and the department. Any
16 evidence of contamination submitted with the original pleadings shall be admissible
17 in court. Any evidence of contamination submitted to the court prior to July 1, 2012,
18 shall be admissible in court.

19 (b) A party to the action may admit responsibility for environmental damage
20 and shall give the court and the department notice of the admission after the
21 expiration of the delays for the joinder of parties and for intervention of third parties
22 provided for in Subparagraph (a) of this Paragraph.

23 (c) Upon receipt by the department of an admission of responsibility
24 pursuant to Subparagraph (b) of this Paragraph by any party or notice of the
25 determination by the finder of fact that environmental damage exists and
26 determination of the party who caused the damage, the department shall issue notice,
27 personal and public, of such admission or determination to all current and past
28 operators of record, insofar as practicable, based on the records of the department.
29 Personal notice shall be given by certified mail, return receipt requested. Public

1 notice shall be sufficient if it contains a description of the property, field, and section
2 in dispute and the caption of the original or amended petition alleging environmental
3 damage. A full copy of the petition shall be made available for public inspection in
4 the offices of the department and on the website of the department. The notice
5 provided for in this Subparagraph shall constitute judicial advertisement and legal
6 notice as provided by R.S. 43:200 et seq.

7 (d) Upon receipt of the admission of responsibility or the finder of fact
8 determination of a party causing environmental damage, the court shall, without
9 undue delay, and in no case longer than fourteen days, refer the development and
10 approval of the most feasible plan to the department. The department shall order the
11 party or parties who admit responsibility or whom the ~~court~~ finder of fact finds
12 legally responsible for the damage to develop a plan or submittal for the evaluation
13 or remediation to applicable standards of the contamination that resulted in the
14 environmental damage. The ~~court~~ department shall order that the plan be developed
15 and submitted to the department and the court within a time that the ~~court~~ department
16 determines is reasonable and shall allow the plaintiff or any other interested party at
17 least thirty days from the date each plan or submittal was made to the department ~~and~~
18 ~~the court~~ to review the plan or submittal and provide to the department ~~and the court~~
19 a an alternative plan, comment, or ~~input in other~~ response thereto. Any plan or
20 submittal shall include an estimate of the cost to implement the plan. The
21 department shall consider any plan, comment, or response provided timely by any
22 interested party. The department shall submit to the court a schedule of estimated
23 costs for review of the plans or submittals of the parties by the department, and the
24 court shall require the party admitting responsibility or the party found legally
25 responsible by the ~~court~~ finder of fact to deposit in the registry of the court sufficient
26 funds to pay the cost of the department's review of the plans or submittals. ~~Any plan~~
27 ~~or submittal shall include an estimation of cost to implement the plan. When any~~
28 party has admitted responsibility within one hundred eighty days after the expiration
29 of the delay for the joinder of parties as provided by Subparagraph (a) of this

1 Paragraph, the court shall not proceed to a trial of any claim until after a plan to
 2 evaluate and remediate the environmental damage, approved by the department, has
 3 been submitted to the court. Parties may proceed to the pretrial process during the
 4 delay to trial, which includes but is not limited to pretrial motions and discovery.

5 (e) An admission of responsibility pursuant to Subparagraph (b) of this
 6 Paragraph shall be an admission of responsibility solely for purposes of the
 7 evaluation and remediation to applicable regulatory standards of the contamination
 8 that resulted in the environmental damage and shall not be construed as an admission
 9 of liability, nor shall such admission be treated by the court as a waiver of any rights
 10 or defenses, and shall be admissible in court.

11 * * *

12 H. This Section shall not preclude an owner of land from pursuing a judicial
 13 remedy or receiving a judicial award for private claims suffered as a result of
 14 environmental damage, except as otherwise provided in this Section. Nor shall it
 15 preclude a judgment ordering damages for or implementation of additional
 16 remediation in excess of the requirements of the plan adopted by the court pursuant
 17 to this Section as may be required in accordance with the terms of an express
 18 contractual provision. However, any plan of remediation approved by the
 19 department shall be admissible as evidence in any action brought by the claimant in
 20 a court of law. The provisions of this Section, including any admissions made
 21 pursuant to this Section, shall be published to the jury. Any award granted in
 22 connection with the judgment for additional remediation is not required to be paid
 23 into the registry of the court. This Section shall not be interpreted to create any
 24 cause of action or to impose additional implied obligations under the ~~mineral code~~
 25 Mineral Code or arising out of a mineral lease.

26 * * *

27 Section 2. This Act shall become effective on July 1, 2012; if vetoed by the governor
 28 and subsequently approved by the legislature, this Act shall become effective on July 1,
 29 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. 460

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

Present law provides that if a party admits liability for environmental damage or the finder of fact determines that environmental damage exists and determines the party who caused the damage, the court shall order the party admitting responsibility, or whom the court finds legally responsible for the damage, to develop a plan for the evaluation or remediation.

Present law provides that the court shall order that the plan be developed and submitted to DNR, and the court shall allow the plaintiff or any other party at least 30 days to review the plan and provide to DNR and the court an alternative plan which shall include an estimation of the cost of implementation.

Present law requires DNR to consider any plan, comment, or response provided timely by any party, requires DNR to submit to the court a schedule of estimated costs for review of the plans of the parties, and requires the party admitting responsibility or the party found legally responsible by the court to deposit in the registry of the court sufficient funds to pay the cost of DNR's review of the plans.

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 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 before 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 before 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 finder of fact 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.

(Amends R.S. 30:29(C)(1) and (H))