§ 71-2723. Procedure for determining the amount of the cost of disposing of wastes or of restoring an area to its original state following a defendant's conviction under sections 27-0914, 71-2707, 71-2709, 71-2710, 71-2711, 71-2712, 71-2713, 71-2714, 71-2715 and 71-2717 of this chapter.

1. Order directing a hearing. In any case where the court is of the opinion that the sentence should consist of or include the amount of the cost of legally disposing of a hazardous waste when such waste is unlawfully possessed or restoring to its original state the area where a substance was unlawfully released in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter, the court shall order a hearing to determine the amount of the cost of such disposal or restoration. For the purposes of this section, the "original state of the area" shall mean the reasonably ascertainable condition of the property immediately prior to the unlawful disposal or if impracticable to determine such condition, then it shall be the reasonable environmentally sound condition of the property. The order must be filed with the clerk of the court and must specify a date for the hearing not less than ten days after the filing of the order.

2. Notice of hearing. Upon receipt of the order, the clerk of the court must send a notice of the hearing to the defendant, his counsel and the people. Such notice must specify the time and place of the hearing and the fact that the purpose thereof is to determine the amount of the cost of legally disposing of a hazardous waste when such waste is unlawfully possessed or restoring to its original state the area where a substance was released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter.

3. Hearing. When the defendant appears for the hearing the court must ask him whether he wishes to make any statement or offer any evidence with respect to the amount of the cost of legally disposing of the hazardous waste when such waste is unlawfully possessed or restoring to its original state the area where a substance was released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter.

4. Burden and standard of proof; evidence. At any hearing held pursuant to this section the burden of proof rests upon the people. For the purpose of any hearing held pursuant to this section, a finding:

(a) as to the amount of the cost of legally disposing of the hazardous waste when such waste is unlawfully possessed;

(b) as to the amount of the cost of legally restoring to its original state the area where the substance was released unlawfully in violation of sections 27-0914, 71-2710, 71-2711, 71-2712, 71-2713 and 71-2714 of this chapter must be based upon a preponderance of the evidence. The defendant shall be permitted to rebut any evidence offered by the people.

5. Conclusion of hearing. At any time during the pendency of a hearing pursuant to this section the court may, in its discretion, terminate the hearing without making any finding, provided the court states on the record its reasons for the termination. In all other cases the court shall enter its findings and judgment upon the record at the conclusion of the hearing.

6. Judgment. (a) The judgment may require the defendant to pay an amount for the disposal of hazardous wastes or the restoration of the property or to perform duties of disposal or restoration or to perform both.

(b) When the court orders the defendant to pay an amount for the disposal of hazardous wastes or the restoration of the property, the provisions of article four hundred twenty of the criminal procedure law shall govern the collection of the amount which shall be paid to the commissioner for deposit to the credit of the hazardous waste remedial fund established by section ninety-seven-b of the state finance law.

(c) Where the court orders the defendant to perform duties of the disposal of hazardous wastes or the restoration to the property the court may authorize the department to supervise and report to it on the conduct of such duties; provided, however, that, section eight of the court of claims act or any other provision of law to the contrary notwithstanding, the state shall be immune from liability and action with respect to any act or omission done in the exercise of the

department's authority as so conferred by the court; and provided further that this subdivision shall not limit any liability which may otherwise exist for unlawful, willful or malicious acts or omissions on the part of the state, state agencies, or their officers, employees or agents.

(d) In order to most likely assure the disposal of the hazardous wastes or the restoration of the property, where there are two or more defendants the court may apportion the costs or assign the performance duties of disposal or restoration, or both, between or among the defendants as the interests of justice may appear to the court.