

House Amd pending - Protection of Water Supplies

Delegates Manchin, Fleischauer, Ireland, Anderson and Campbell move to amend the bill on page 60 by striking the provisions of section 14 in its entirety, and replacing it with the following:

§22-6A- 14. Protection of water supplies.

(a) Any horizontal well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity or quality for the purposes served by the supply.

(b) Any landowner or water purveyor suffering pollution or diminution of a water supply as a result of the drilling, alteration or operation of a horizontal gas well may so notify the department and request that an investigation be conducted. Within ten days of such notification, the Secretary shall investigate any such claim and shall, within 45 days following notification, make a determination. If the Secretary finds that the pollution or diminution was caused by the drilling, alteration or operation activities or if it presumes the well operator responsible for pollution pursuant to subsection (c), then it shall issue such orders to the well operator as are necessary to assure compliance with subsection (a). Such orders may include orders requiring the

temporary replacement of a water supply where it is determined that the pollution or diminution may be of limited duration.

(c) Unless rebutted by one of the five defenses established in subsection (d), it shall be presumed that a well operator is responsible for the pollution of a water supply that is within 2,500 feet of the horizontal gas well, where the pollution occurred within six months after the completion of drilling or alteration of such well.

(d) In order to rebut the presumption of liability established in subsection (c), the well operator must affirmatively prove one of the following five defenses:

(1) The pollution existed prior to the drilling or alteration activity as determined by a predrilling or prealteration survey.

(2) The landowner or water purveyor refused to allow the operator access to conduct a predrilling or prealteration survey.

(3) The water supply is not within 2,500 feet of the well.

(4) The pollution occurred more than six months after completion of drilling or alteration activities.

(5) The pollution occurred as the result of some cause other than the drilling or alteration activity.

(e) Any operator electing to preserve its defenses under subsection (d)(1) or (2) shall retain the services of an independent certified laboratory to conduct the predrilling or prealteration survey of water supplies. A copy of the results of

any such survey shall be submitted to the Secretary and the landowner or water purveyor in a manner prescribed by the Secretary.

(f) Nothing herein shall prevent any landowner or water purveyor who claims pollution or diminution of a water supply from seeking any other remedy that may be provided at law.