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SB461

FILED

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 461

(By Senator Kessler, et al)

PASSED March 11, 2006

In Effect 90 days from Passage

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SECRETARY OF STATE VIRGINIA

ENROLLED

Senate Bill No. 461

(BY SENATORS KESSLER, DEMPSEY, FANNING, FOSTER,
HUNTER, JENKINS, MINARD, OLIVERIO, WHITE, BARNES,
CARUTH, DEEM, LANHAM, MCKENZIE AND WEEKS)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §22-3-24 of the Code of West Virginia, 1931, as amended, relating to underground water supply replacement; altering requirements for mine operators for replacement of water supply; and requiring prior department approval before discontinuing water supply replacement.

Be it enacted by the Legislature of West Virginia:

That §22-3-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-24. Water rights and replacement; waiver of replacement.

- 1 (a) Nothing in this article affects in any way the rights of
- 2 any person to enforce or protect, under applicable law, the

3 person's interest in water resources affected by a surface
4 mining operation.

5 (b) Any operator shall replace the water supply of an
6 owner of interest in real property who obtains all or part
7 of the owner's supply of water for domestic, agricultural,
8 industrial or other legitimate use from an underground or
9 surface source where the supply has been affected by
10 contamination, diminution or interruption proximately
11 caused by the surface mining operation, unless waived by
12 the owner.

13 (c) There is a rebuttable presumption that a mining
14 operation caused damage to an owner's underground
15 water supply if the inspector determines the following: (1)
16 Contamination, ~~diminution~~ or damage to an owner's
17 underground water supply exists; and (2) a preblast survey
18 was performed, consistent with the provisions of section
19 thirteen-a of this article, on the owner's property, includ-
20 ing the underground water supply, that indicated that
21 contamination, diminution or damage to the underground
22 water supply did not exist prior to the mining conducted
23 at the mining operation.

24 (d) The operator conducting the mining operation shall:
25 (1) Provide an emergency drinking water supply within
26 twenty-four hours; (2) provide temporary water supply
27 within seventy-two hours; (3) within thirty days begin
28 activities to establish a permanent water supply or submit
29 a proposal to the secretary outlining the measures and
30 timetables to be utilized in establishing a permanent
31 supply. The total time for providing a permanent water
32 supply may not exceed two years. If the operator demon-
33 strates that providing a permanent replacement water
34 supply can not be completed within two years, the secre-
35 tary may extend the time frame on case-by-case basis; and
36 (4) pay all reasonable costs incurred by the owner in
37 securing a water supply.

38 (e) An owner aggrieved under the provisions of subsec-
39 tions (b), (c) or (d) of this section may seek relief in court
40 or pursuant to the provisions of section five, article three-a
41 of this chapter.

42 (f) The director shall propose rules for legislative ap-
43 proval in accordance with the provisions of article three,
44 chapter twenty-nine-a of this code to implement the
45 requirements of this section.

46 (g) The provisions of subsection (c) of this section shall
47 not apply to the following: (1) Underground coal mining
48 operations; (2) the surface operations and surface impacts
49 incident to an underground coal mine; and (3) the extrac-
50 tion of minerals by underground mining methods or the
51 surface impacts of the underground mining methods.

52 (h) Notwithstanding the denial of the operator of
53 responsibility for the damage of the owner's water supply
54 or the status of any appeal on determination of liability for
55 the damage to the owner's water supply, the operator may
56 not discontinue providing the required water service until
57 authorized by the division.

58 Notwithstanding the provisions of subsection (g) of this
59 section, on and after the effective date of the amendment
60 and reenactment of this section during the regular legisla-
61 tive session of two thousand six, the provisions of this
62 section shall apply to all mining operations for water
63 replacement claims resulting from mining operations
64 regardless of when the claim arose.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Clardy Wick
.....
Chairman Senate Committee

R. Brey
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Gregg H. Bell
.....
Clerk of the House of Delegates

Carl Ray Tompkins
.....
President of the Senate

Robert D. ...
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *April* 2006.

Paul Hancock
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:30am