

Amd adopted 10-13

Rebuttable Presumption of Contamination or Deprivation

The amendment strikes out existing section 16 and inserts in lieu thereof, a new section 16, to read as follows:

§22-6A-16. Civil action for contamination or deprivation of fresh water source or supply; presumption; water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person's interest in water resources affected by an oil or gas operation.

(b) Unless rebutted by one of the defenses established in subsection (c) below, in any action for contamination or deprivation of a fresh water source or supply within 2,500 feet of the center of the well pad for an oil or gas well, there shall be a rebuttable presumption that the drilling and the oil or gas well or either was the proximate cause of the contamination or deprivation of the fresh water source or supply.

(c) In order to rebut the presumption of liability established in subsection (b) above, the operator must affirmatively prove one of the following 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 the property to conduct a predrilling or

prealteration survey.

(3) The water supply is not within two thousand five hundred 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.

(d) Any operator electing to preserve its defenses under subdivision (c)(1) or (c)(2) above 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 the survey shall be submitted to the department and the landowner or water purveyor in a manner prescribed by the secretary.

(e) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of that owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the oil or gas operation, unless waived by that owner.

(f) The operator conducting the oil or gas operation shall:

- (1) Provide an emergency drinking water supply within twenty-four hours;
- (2) provide temporary water supply within seventy-two hours;
- (3) within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the

measures and timetables to be utilized in establishing a permanent supply. The total time for providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply cannot be completed within two years, the secretary may extend the time frame on case-by-case basis; and (4) pay all reasonable costs incurred by the real property owner in securing a water supply.

(g) A real property owner as described in subsection (b) above aggrieved under the provisions of subsections (b), (c) or (d) of this section may seek relief in court.

(h) Notwithstanding the denial of the operator of responsibility for the damage to the real property owner's water supply or the status of any appeal on determination of liability for the damage to the real property owner's water supply, the operator may not discontinue providing the required water service until authorized to do so by the secretary.