

H. B. 4386

(By Delegates Manypenny, Staggers and Fleischauer)
[Introduced February 1, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §22-6A-18 of the Code of West Virginia, 1931, as amended, relating to requiring the secretary to order the operator of a gas and oil operation whose operations have resulted in contamination, diminution or interruption of a water supply for domestic or agricultural purposes to provide an emergency, temporary and permanent water supply and pay costs; requiring operators to pretest water wells and domestic springs within three thousand five hundred feet of the center of the well pad prior to drilling; continuing the obligation of operator to provide water supply pending final resolution of litigation; and, modifying the defenses to the rebuttable presumption that the drilling or oil and gas well, or both, is the proximate cause of any contamination, diminution or interruption of water wells or springs.

Be it enacted by the Legislature of West Virginia:

1 That §22-6A-18 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted to read as follows:

3 **ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.**

4 **§22-6A-18. Civil action for contamination or deprivation of fresh**
5 **water source or supply; presumption; water rights and**
6 **replacement; waiver of replacement.**

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

11 (b) Unless rebutted by one of the defenses established in
12 subsection (c) of this section, in any action for contamination or
13 deprivation of a fresh water source or supply within ~~one thousand~~
14 ~~five hundred feet~~ three thousand five hundred feet of the center of
15 the well pad for horizontal well, there is a rebuttable presumption
16 that the drilling and the oil or gas well or either was the
17 proximate cause of the contamination or deprivation of the fresh
18 water source or supply.

19 (c) In order to rebut the presumption of liability established
20 in subsection (b) of this section, the operator must prove by a
21 preponderance of the evidence one or more of the following
22 defenses:

23 (1) The pollution existed prior to the drilling or alteration

1 activity as determined by ~~a~~ the predrilling or prealteration water
2 well test required under subsection (d) of this section;

3 (2) The landowner or water purveyor refused to allow the
4 operator access to the property to conduct a predrilling or
5 prealteration water well test;

6 (3) The water supply is not within ~~one thousand five hundred~~
7 ~~feet~~ three thousand five hundred feet of the well; or

8 (4) The pollution occurred more than ~~six months after~~
9 ~~completion of drilling or alteration activities~~ one year following
10 the last fracking or stimulating activity.

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

13 (d) ~~Any operator electing to preserve its defenses under~~
14 ~~subdivision (1), subsection (c) of this section~~ Operators shall
15 retain the services of an independent certified laboratory to
16 conduct the predrilling or prealteration water well test. A copy
17 of the results of the test shall be submitted to the department and
18 the surface owner or water purveyor in a manner prescribed by the
19 secretary.

20 (e) Any operator shall replace the water supply of an owner of
21 interest in real property who obtains all or part of that owner's
22 supply of water for domestic, agricultural, industrial or other
23 legitimate use from an underground or surface source with a
24 comparable water supply where the secretary or other court with

1 jurisdiction determines that the water supply has been affected by
2 contamination, diminution or interruption proximately caused by the
3 oil or gas operation, unless waived in writing by that owner.

4 (f) The secretary ~~may~~ shall order the operator conducting the
5 oil or gas operation to:

6 (1) Provide an emergency drinking water supply within
7 twenty-four hours;

8 (2) Provide temporary water supply within seventy-two hours
9 that will continue until such time that a permanent replacement
10 water supply has been provided and that is adequate to meet the
11 needs of the landowner based on historical usage;

12 (3) Within thirty days ~~begin activities to establish a~~
13 ~~permanent water supply or~~ submit a proposal to the secretary
14 outlining the measures and timetables to be used in establishing a
15 permanent supply and begin activities. Alternatively, within
16 thirty days submit a proposal to the secretary outlining the
17 measures and timetables to be used in establishing a permanent
18 supply and begin activities within thirty days of submitting the
19 proposal. The permanent supply shall be equal to the quality and
20 quantity used historically and shall be sufficient to satisfy the
21 potential need for domestic and agricultural supply. The total
22 time in providing a permanent water supply may not exceed two
23 years. If the operator demonstrates that providing a permanent
24 replacement water supply cannot be completed within two years, the

1 secretary may extend the time frame on case-by-case basis; and

2 (4) Pay all reasonable costs incurred by the real property
3 owner in securing a water supply.

4 (g) A person as described in subsection (b) of this section
5 aggrieved under the provisions of subsections (b), (e) or (f) of
6 this section may seek relief in court.

7 (h) The secretary shall propose rules for legislative approval
8 in accordance with the provisions of article three, chapter twenty-
9 nine-a of this code to implement the requirements of this section.

10 (i) Notwithstanding the denial of the operator of
11 responsibility for the damage to the real property owner's water
12 supply or the status of any appeal on determination of liability
13 for the damage to the real property owner's water supply, the
14 operator may not discontinue providing the required water service
15 until ~~authorized to do so by the secretary or a court of competent~~
16 jurisdiction a final resolution, through court order or otherwise,
17 has been achieved.

NOTE: The purpose of this bill is to require the secretary to order the operator of a gas and oil operation whose operations have resulted in contamination, diminution or interruption of a water supply for domestic or agricultural purposes to provide an emergency, temporary and permanent water supply and pay costs; to require operators to pretest water wells and domestic springs within three thousand five hundred feet of the center of the well pad prior to drilling; to require an operator to continue its obligation to provide a water supply pending final resolution of litigation; and, to modify defenses to the rebuttable presumption

that the drilling or oil and gas well, or both, is the proximate cause of any contamination, diminution or interruption of water wells or springs.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.