WEST VIRGINIA CODE: §22-6A-18

§22-6A-18. 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) of this section, in any action for contamination or deprivation of a fresh water source or supply within one thousand five hundred feet of the center of the well pad for horizontal well, there is 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) of this section, the operator must prove by a preponderance of the evidence one of the following defenses:

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

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

(3) The water supply is not within one 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 (1), subsection (c) of this section shall retain the services of an independent certified laboratory to conduct the predrilling or prealteration water well test. A copy of the results of the test shall be submitted to the department and the surface owner 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 with a comparable water supply where the secretary determines that the water supply has been affected by contamination, diminution or interruption proximately caused by the oil or gas operation, unless waived in writing by that owner.

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

(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 used in establishing a permanent supply. The total time in 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 person as described in subsection (b) of this section aggrieved under the provisions of subsections (b), (e) or (f) of this section may seek relief in court.

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

(i) 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 or a court of competent jurisdiction.

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