

2997

2009-2010 Regular Sessions

I N S E N A T E

March 9, 2009

Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to protection of water supplies

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 23 of the environmental conservation law is amended  
2 by adding a new title 15 to read as follows:

3 TITLE 15

4 PROTECTION OF WATER SUPPLIES

5 SECTION 23-1501. PROTECTION OF WATER SUPPLIES.

6 S 23-1501. PROTECTION OF WATER SUPPLIES.

7 1. ANY OWNER, DRILLER OR PRODUCER WHO AFFECTS A PUBLIC OR PRIVATE  
8 POTABLE WATER SUPPLY BY POLLUTION OR DIMINUTION AS DEFINED IN SUBDIVI-  
9 SION 2 OF THIS SECTION SHALL RESTORE OR REPLACE THE AFFECTED SUPPLY WITH  
10 AN ALTERNATE SOURCE OF WATER ADEQUATE IN QUANTITY AND QUALITY FOR THE  
11 PURPOSES SERVED BY THE SUPPLY.

12 2. POLLUTION SHALL BE CONSIDERED TO HAVE OCCURRED WHEN ANY OF THE  
13 FOLLOWING PARAMETERS SHALL INCREASE BY AN AMOUNT TO CAUSE THE WATER FROM  
14 THE AFFECTED WELL TO EXCEED DRINKING WATER STANDARDS AS ESTABLISHED BY  
15 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY: CHLORIDES; PH;  
16 TURBIDITY; IRON; MANGANESE; ALKALINITY; CALCIUM; CONDUCTIVITY; DISSOLVED  
17 SOLIDS; HARDNESS; POTASSIUM; SODIUM; OIL AND GREASE; SULFATE; COLIFORM  
18 OR METHANE.

19 IN THE EVENT THAT THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
20 DRINKING WATER STANDARDS FAIL TO RECOGNIZE ANY OF THE FOREGOING PARAME-  
21 TERS, POLLUTION SHALL BE CONSIDERED TO HAVE OCCURRED IF A PARAMETER  
22 INCREASES BY TEN PERCENT OR MORE.

23 DIMINUTION SHALL BE CONSIDERED TO HAVE OCCURRED WHEN THE VOLUME OF  
24 WATER FROM AN AFFECTED WATER SUPPLY SHALL PRECIPITOUSLY DIMINISH BY  
25 FIFTY PERCENT OR MORE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 3. ANY LANDOWNER, WATER PURVEYOR OR OTHER PERSON SUFFERING POLLUTION  
2 OR DIMINUTION OF A WATER SUPPLY AS A RESULT OF THE DRILLING, TREATMENT,  
3 ALTERATION OR OPERATION OF AN OIL OR GAS WELL MAY SO NOTIFY THE DEPART-  
4 MENT AND REQUEST THAT AN INVESTIGATION BE CONDUCTED. WITHIN TEN DAYS OF  
5 SUCH NOTIFICATION, THE DEPARTMENT SHALL INVESTIGATE ANY SUCH CLAIM AND  
6 SHALL, WITHIN FORTY-FIVE DAYS FOLLOWING NOTIFICATION, MAKE A DETERMI-  
7 NATION. IF THE DEPARTMENT FINDS THAT THE POLLUTION OR DIMINUTION WAS  
8 CAUSED BY THE DRILLING, TREATMENT, ALTERATION OR OPERATION ACTIVITIES,  
9 OR IF IT PRESUMES THE OWNER, DRILLER OR PRODUCER RESPONSIBLE FOR  
10 POLLUTION OR DIMINUTION PURSUANT TO SUBDIVISION 4 OF THIS SECTION THEN  
11 IT SHALL ISSUE SUCH ORDERS TO THE OWNER, DRILLER OR PRODUCER AS ARE  
12 NECESSARY TO ASSURE COMPLIANCE WITH SUBDIVISION ONE OF THIS SECTION.  
13 SUCH ORDERS MAY INCLUDE ORDERS REQUIRING THE TEMPORARY REPLACEMENT OF  
14 WATER SUPPLY WHERE IT IS DETERMINED THAT THE POLLUTION OR DIMINUTION MAY  
15 BE OF LIMITED DURATION.

16 4. UNLESS REBUTTED BY ONE OF THE FIVE DEFENSES ESTABLISHED IN SUBDIVI-  
17 SION 5 OF THIS SECTION, IT SHALL BE PRESUMED THAT AN OWNER, DRILLER OR  
18 PRODUCER IS RESPONSIBLE FOR THE POLLUTION OR DIMINUTION OF VOLUME OF A  
19 WATER SUPPLY THAT IS WITHIN ONE THOUSAND FEET OF THE DRILLING, ALTER-  
20 ATION OR OPERATION ACTIVITIES, WHERE THE POLLUTION OCCURRED WITHIN SIX  
21 MONTHS OR THE DIMINUTION OF VOLUME OCCURRED WITHIN FORTY-EIGHT HOURS  
22 AFTER THE COMPLETION OF DRILLING, TREATMENT OR ALTERATION OF SUCH WELL.

23 5. IN ORDER TO REBUT THE PRESUMPTION OF LIABILITY ESTABLISHED IN  
24 SUBDIVISION 4 OF THIS SECTION, THE OWNER, DRILLER OR PRODUCER MUST  
25 AFFIRMATIVELY PROVE ONE OF THE FOLLOWING FIVE DEFENSES:

26 A. THE POLLUTION EXISTED PRIOR TO THE DRILLING, OPERATION, TREATMENT  
27 OR ALTERATION ACTIVITY AS DETERMINED BY A PREDRILLING, PRETREATMENT OR  
28 PREALTERATION SURVEY.

29 B. THE LANDOWNER OR WATER PURVEYOR REFUSED TO ALLOW THE OWNER, DRILLER  
30 OR PRODUCER ACCESS TO CONDUCT A PREDRILLING OR PREALTERATION SURVEY OF  
31 AN ACTIVE WATER SUPPLY. IF A LANDOWNER OR WATER PURVEYOR FAILS TO  
32 RESPOND WITHIN THIRTY DAYS TO A NOTIFICATION SENT BY CERTIFIED OR REGIS-  
33 TERED MAIL, ADDRESSED TO THE OWNER OF RECORD AS RECORDED IN THE OFFICE  
34 OF THE COUNTY CLERK, MADE BY THE OWNER, OPERATOR OR DRILLER DECLARING  
35 THE INTENTION OF THE OWNER, OPERATOR OR DRILLER TO CONDUCT A PREDRILL-  
36 ING, PRETREATMENT OR PREALTERATION SURVEY, IT SHALL BE PRESUMED THAT THE  
37 LANDOWNER HAS REFUSED TO ALLOW THE OWNER, PRODUCER OR DRILLER TO CONDUCT  
38 A PREDRILLING OR PREALTERATION SURVEY OF AN ACTIVE WATER SUPPLY.

39 C. THE WATER SUPPLY IS NOT WITHIN ONE THOUSAND FEET OF THE DRILLING,  
40 ALTERATION OR OPERATION ACTIVITIES.

41 D. THE POLLUTION OCCURRED MORE THAN SIX MONTHS AFTER COMPLETION OF  
42 DRILLING, TREATMENT OR ALTERATION ACTIVITIES.

43 E. THE POLLUTION OCCURRED AS THE RESULT OF SOME CAUSE OTHER THAN THE  
44 DRILLING, TREATMENT, OPERATION OR ALTERATION ACTIVITY.

45 6. ANY OWNER, DRILLER OR PRODUCER ELECTING TO PRESERVE ITS DEFENSES  
46 UNDER PARAGRAPH A OR B OF SUBDIVISION 5 OF THIS SECTION SHALL RETAIN THE  
47 SERVICES OF AN INDEPENDENT CERTIFIED LABORATORY TO CONDUCT THE PREDRILL-  
48 ING OR PREALTERATION SURVEY OF WATER SUPPLIES. A COPY OF THE RESULTS OF  
49 ANY SUCH SURVEY SHALL BE SUBMITTED TO THE DEPARTMENT AND THE LANDOWNER,  
50 WATER PURVEYOR OR OTHER PERSON IN MANNER PRESCRIBED BY THE DEPARTMENT.

51 7. NOTHING IN THIS SECTION SHALL PREVENT ANY LANDOWNER, WATER PURVEYOR  
52 OR OTHER PERSON WHO CLAIMS POLLUTION OR DIMINUTION OF A WATER SUPPLY  
53 FROM SEEKING ANY OTHER REMEDY THAT MAY BE PROVIDED AT LAW OR IN EQUITY.

54 S 2. This act shall take effect on the one hundred twentieth day after  
55 it shall have become a law.