

LBD09059-01-5

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 FOUR OF THIS SECTION  
11 THEN 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 FIVE OF THIS SECTION, IT SHALL BE PRESUMED THAT AN OWNER, DRILLER  
18 OR PRODUCER IS RESPONSIBLE FOR THE POLLUTION OR DIMINUTION OF VOLUME OF  
19 A 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 FOUR 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 FIVE OF THIS SECTION SHALL RETAIN  
47 THE SERVICES OF AN INDEPENDENT CERTIFIED LABORATORY TO CONDUCT THE  
48 PREDRILLING OR PREALTERATION SURVEY OF WATER SUPPLIES. A COPY OF THE  
49 RESULTS OF ANY SUCH SURVEY SHALL BE SUBMITTED TO THE DEPARTMENT AND THE  
50 LANDOWNER, WATER PURVEYOR OR OTHER PERSON IN A MANNER PRESCRIBED BY THE  
51 DEPARTMENT.

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

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