

STATE OF NEW YORK

5421

2019-2020 Regular Sessions

IN ASSEMBLY

February 12, 2019

Introduced by M. of A. GOODELL, GIGLIO, ORTIZ, MORINELLO -- read once
and referred 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 Assem-
bly, 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:

TITLE 15

PROTECTION OF WATER SUPPLIES

3 Section 23-1501. Protection of water supplies.

4 § 23-1501. Protection of water supplies.

5 1. Any owner, driller or producer who affects a public or private
6 potable water supply by pollution or diminution as defined in subdivi-
7 sion two of this section shall restore or replace the affected supply
8 with an alternate source of water adequate in quantity and quality for
9 the purposes served by the supply.

10 2. Pollution shall be considered to have occurred when any of the
11 following parameters shall increase by an amount to cause the water from
12 the affected well to exceed drinking water standards as established by
13 the United States Environmental Protection Agency: chlorides; pH;
14 turbidity; iron; manganese; alkalinity; calcium; conductivity; dissolved
15 solids; hardness; potassium; sodium; oil and grease; sulfate; coliform
16 or methane.

17 In the event that the United States Environmental Protection Agency
18 drinking water standards fail to recognize any of the foregoing parame-
19 ters, pollution shall be considered to have occurred if a parameter
20 increases by ten percent or more.

21 Diminution shall be considered to have occurred when the volume of
22 water from an affected water supply shall precipitously diminish by
23 fifty percent or more.

24 EXPLANATION--Matter in italics (underscored) is new; matter in brackets
25 [-] 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 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 § 2. This act shall take effect on the one hundred twentieth day after
56 it shall have become a law.