

# STATE OF NEW YORK

1932

2023-2024 Regular Sessions

## IN ASSEMBLY

January 23, 2023

Introduced by M. of A. GOODELL -- 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 Assembly, do enact as follows:

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

### TITLE 15

#### PROTECTION OF WATER SUPPLIES

Section 23-1501. Protection of water supplies.

§ 23-1501. Protection of water supplies.

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

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

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

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

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

LBD06114-01-3

3. Any landowner, water purveyor or other person suffering pollution or diminution of a water supply as a result of the drilling, treatment, alteration or operation of an oil or gas well may so notify the department and request that an investigation be conducted. Within ten days of such notification, the department shall investigate any such claim and shall, within forty-five days following notification, make a determination. If the department finds that the pollution or diminution was caused by the drilling, treatment, alteration or operation activities, or if it presumes the owner, driller or producer responsible for pollution or diminution pursuant to subdivision four of this section then it shall issue such orders to the owner, driller or producer as are necessary to assure compliance with subdivision one of this section. Such orders may include orders requiring the temporary replacement of water supply where it is determined that the pollution or diminution may be of limited duration.

4. Unless rebutted by one of the five defenses established in subdivision five of this section, it shall be presumed that an owner, driller or producer is responsible for the pollution or diminution of volume of a water supply that is within one thousand feet of the drilling, alteration or operation activities, where the pollution occurred within six months or the diminution of volume occurred within forty-eight hours after the completion of drilling, treatment or alteration of such well.

5. In order to rebut the presumption of liability established in subdivision four of this section, the owner, driller or producer must affirmatively prove one of the following five defenses:

a. The pollution existed prior to the drilling, operation, treatment or alteration activity as determined by a predrilling, pretreatment or prealteration survey.

b. The landowner or water purveyor refused to allow the owner, driller or producer access to conduct a predrilling or prealteration survey of an active water supply. If a landowner or water purveyor fails to respond within thirty days to a notification sent by certified or registered mail, addressed to the owner of record as recorded in the office of the county clerk, made by the owner, operator or driller declaring the intention of the owner, operator or driller to conduct a predrilling, pretreatment or prealteration survey, it shall be presumed that the landowner has refused to allow the owner, producer or driller to conduct a predrilling or prealteration survey of an active water supply.

c. The water supply is not within one thousand feet of the drilling, alteration or operation activities.

d. The pollution occurred more than six months after completion of drilling, treatment or alteration activities.

e. The pollution occurred as the result of some cause other than the drilling, treatment, operation or alteration activity.

6. Any owner, driller or producer electing to preserve its defenses under paragraph a or b of subdivision five of this section shall retain the services of an independent certified laboratory to conduct the predrilling or prealteration survey of water supplies. A copy of the results of any such survey shall be submitted to the department and the landowner, water purveyor or other person in a manner prescribed by the department.

7. Nothing in this section shall prevent any landowner, water purveyor or other person who claims pollution or diminution of a water supply from seeking any other remedy that may be provided at law or in equity.

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