

AMENDMENTS TO HOUSE BILL NO. 1401

Sponsor: REPRESENTATIVE CUTLER

Printer's No. 2610

1 Amend Bill, page 1, line 11, by inserting after "TAX;"
2 in general provisions, providing for protection of water
3 supplies;

4 Amend Bill, page 36, by inserting between lines 11 and 12

5 Section 2. The act is amended by adding a section to read:

6 Section 3003.23 Protection of Water Supplies.--(a) In
7 addition to the requirements of subsection (c.1), a well
8 operator who affects a public or private water supply by
9 pollution or diminution shall restore or replace the affected
10 supply with an alternate source of water adequate in quantity
11 and quality for the purposes served by the supply. The
12 Environmental Quality Board shall promulgate regulations
13 necessary to meet the requirements of this subsection.

14 (b) A landowner or water purveyor suffering pollution or
15 diminution of a water supply as a result of the drilling,
16 alteration or operation of an oil or gas well may so notify the
17 Department of Environmental Protection and request that an
18 investigation be conducted. Within ten days of notification, the
19 Department of Environmental Protection shall investigate the
20 claim and make a determination within forty-five days following
21 notification. If the Department of Environmental Protection
22 finds that the pollution or diminution was caused by drilling,
23 alteration or operation activities or if it presumes the well
24 operator responsible for pollution under subsection (c), the
25 Department of Environmental Protection shall issue orders to the
26 well operator necessary to assure compliance with subsection
27 (a), including orders requiring temporary replacement of a water
28 supply where it is determined that pollution or diminution may
29 be of limited duration.

30 (b.1) (Reserved).

31 (b.2) The Department of Environmental Protection shall
32 establish a single Statewide toll-free telephone number that
33 individuals may use to report cases of water contamination which
34 may be associated with the development of oil and gas resources.
35 The Statewide toll-free telephone number shall be provided in a
36 conspicuous manner in the notification required under 58 Pa.C.S.
37 § 3211(b) (relating to well permits) and on the department's

1 publicly accessible Internet website.

2 (b.3) The Department of Environmental Protection shall
3 develop appropriate administrative responses to calls received
4 on the Statewide toll-free telephone number for water
5 contamination.

6 (b.4) The Department of Environmental Protection shall
7 publish, on its publicly accessible Internet website, lists of
8 confirmed cases of subterranean water supply contamination that
9 result from hydraulic fracturing.

10 (b.5) The Department of Environmental Protection shall
11 ensure that a facility which seeks a National Pollutant
12 Discharge Elimination System permit for the purposes of treating
13 and discharging wastewater originating from oil and gas
14 activities into waters of this Commonwealth is operated by a
15 competent and qualified individual.

16 (c) Unless rebutted by a defense established in subsection
17 (d), it shall be presumed that a well operator is responsible
18 for pollution of a water supply if:

19 (1) except as set forth in paragraph (2):

20 (i) the water supply is within 1,000 feet of an oil or gas
21 well; and

22 (ii) the pollution occurred within six months after
23 completion of drilling or alteration of the oil or gas well; or

24 (2) in the case of an unconventional well:

25 (i) the water supply is within 2,500 feet of the
26 unconventional vertical well bore; and

27 (ii) the pollution occurred within twelve months of the
28 later of completion, drilling, stimulation or alteration of the
29 unconventional well.

30 (c.1) If the affected water supply is within the rebuttable
31 presumption area as provided in subsection (c) and the
32 rebuttable presumption applies, the operator shall provide a
33 temporary water supply if the water user is without a readily
34 available alternative source of water. The temporary water
35 supply provided under this subsection shall be adequate in
36 quantity and quality for the purposes served by the supply.

37 (d) To rebut the presumption established under subsection
38 (c), a well operator must affirmatively prove any of the
39 following:

40 (1) except as set forth in paragraph (2):

41 (i) the pollution existed prior to the drilling or
42 alteration activity as determined by a predrilling or
43 prealteration survey;

44 (ii) the landowner or water purveyor refused to allow the
45 operator access to conduct a predrilling or prealteration
46 survey;

47 (iii) the water supply is not within 1,000 feet of the well;

48 (iv) the pollution occurred more than six months after
49 completion of drilling or alteration activities; and

50 (v) the pollution occurred as the result of a cause other
51 than the drilling or alteration activity; or

1 (2) in the case of an unconventional well:
2 (i) the pollution existed prior to the drilling, stimulation
3 or alteration activity as determined by a predrilling or
4 prealteration survey;
5 (ii) the landowner or water purveyor refused to allow the
6 operator access to conduct a predrilling or prealteration
7 survey;
8 (iii) the water supply is not within 2,500 feet of the
9 unconventional vertical well bore;
10 (iv) the pollution occurred more than twelve months after
11 completion of drilling or alteration activities; or
12 (v) the pollution occurred as the result of a cause other
13 than the drilling or alteration activity.
14 (e) An operator electing to preserve a defense under
15 subsection (d)(1) or (2) shall retain an independent certified
16 laboratory to conduct a predrilling or prealteration survey of
17 the water supply. A copy of survey results shall be submitted to
18 the Department of Environmental Protection and the landowner or
19 water purveyor in the manner prescribed by the Department of
20 Environmental Protection.
21 (e.1) An operator of an unconventional well must provide
22 written notice to the landowner or water purveyor indicating
23 that the presumption established under subsection (c) may be
24 void if the landowner or water purveyor refused to allow the
25 operator access to conduct a predrilling or prealteration
26 survey. Proof of written notice to the landowner or water
27 purveyor shall be provided to the Department of Environmental
28 Protection for the operator to retain the protections under
29 subsection (d)(2)(ii). Proof of written notice shall be presumed
30 if provided in accordance with 58 Pa.C.S. § 3212(a) (relating to
31 permit objections).
32 (f) Nothing in this section shall prevent a landowner or
33 water purveyor claiming pollution or diminution of a water
34 supply from seeking any other remedy at law or in equity.

35 Amend Bill, page 36, line 12, by striking out "2" and
36 inserting

37 3

38 Amend Bill, page 36, line 16, by striking out "3" and
39 inserting

40 4

41 Amend Bill, page 36, line 17, by striking out "3" and
42 inserting

43 4

44 Amend Bill, page 36, by inserting between lines 21 and 22

1 (3) The General Assembly declares that the repeal under
2 paragraph (2) is necessary to effectuate the addition of
3 section 3003.23 of the act.
4 (4) 58 Pa.C.S. § 3218 is repealed.
5 Amend Bill, page 36, line 22, by striking out "4" and
6 inserting
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