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HOUSE BILL NO. 1086

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 22.1 of Title 45.1 a section numbered 45.1-361.42, relating to protection of water sources from gas and oil drilling operations.

Patron—Phillips

Referred to Committee on Mining and Mineral Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 22.1 of Title 45.1 a section numbered 45.1-361.42 as follows:

§ 45.1-361.42. Protection of water sources from oil and gas drilling operations.

A. At the written request of the owners of record of the surface tract or an occupant of land within 1,500 feet of the proposed well, the operator shall sample and analyze, in accordance with this section, water from any water wells or springs located within 1,500 feet of the proposed well that is actually utilized by such owner or occupant for human consumption, domestic animals, or other general use. However, if no request is made of the operator, the operator shall sample and analyze in accordance with this section water from any one known and existing water well or spring within 1,500 feet of the proposed well. If for any reason the operator is unable to sample and analyze water from any such water wells or springs within 1,500 feet of the operator's proposed well, the Inspector may require the operator to sample and analyze in accordance with this section water from one existing water well or spring located between 500 and 1500 feet from the operator's proposed well. At the operator's discretion, any or all water wells or springs within 1,500 feet of the operator's proposed well may be sampled and analyzed in accordance with this section.

B. Notice of the water testing obligation and procedure shall be included in the notice of the application for a permit required by § 45.1-361.30 given to surface owners on tracts within 1,500 feet of the operator's proposed well where the surface is to be disturbed. The operator shall make a reasonable attempt to give additional notice to other surface owners of record and upon known occupiers of the surface of the right to request the operator to sample and analyze a water well or spring. The operator will be deemed to have satisfied this requirement if (i) the notice is provided by personal service or by posting the notice at the entrance to any dwelling located within 1,500 feet and at any other locations within 1,500 feet of the operator's proposed well where the use of such water wells and springs is conspicuous or (ii) the notice is mailed to dwellings located within 1,500 feet of the operator's proposed well. The notice provided by the operator in accordance with this section shall be in a form approved by the Inspector which, at a minimum, shall contain a statement of such user's right to request such sampling and analysis, advise such users of the independent right to sample and analyze any water supply at the expense of the user, advise such users as to whether the operator will or will not utilize an independent laboratory to analyze any sample, and advise such users of the availability through the Inspector of a list of laboratories. At the time of the filing with the Inspector of the permit application for well drilling, the operator shall file with the Inspector a statement describing whether any such users were identified and the manner in which any such users were provided with notice.

C. The operator shall analyze water samples for the following: acidity or alkalinity, iron, total dissolved solids, chloride, detergents and other parameters as described by the operator. All laboratories used by an operator, whether independent laboratories or not, shall be approved by the Inspector as being capable of performing sample analyses in accordance with this section. The operator shall, no later than thirty days after receipt of the permit for gas and oil operations, provide the results of such sample analysis in writing to the Inspector and to any owner or occupant who has requested such analysis in accordance with subsection A.

D. The submission of analytical results on behalf of the operator pursuant to subsection C shall be made by a responsible operator representative or contractor knowledgeable of, and responsible for, the sampling and analyses of such samples who shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."

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60 *E. In any action for contamination or deprivation of a fresh water source or supply within 1,500 feet*
61 *of the site of drilling for a well, there shall be a rebuttable presumption that such drilling, and such*
62 *well, or either, was the proximate cause of the contamination or deprivation of such fresh water source*
63 *or supply occurring within six months after the completion of drilling of the well. In order to rebut this*
64 *presumption of liability, the well operator must affirmatively prove one of the following defenses:*

65 *1. The pollution existed prior to the drilling or alteration activity as determined by a predrilling or*
66 *prealteration survey;*

67 *2. The water supply is not within 1,500 feet of the well;*

68 *3. The pollution occurred more than six months after completion of drilling; or*

69 *4. The pollution occurred as the result of some cause other than the drilling.*

70 *F. Any action brought for contamination or deprivation of a fresh water source or supply pursuant*
71 *to this section shall be brought within five years of the completion of drilling of the well.*

72 *G. Nothing in this section shall prevent any surface owner or occupier who claims pollution or*
73 *diminution of a water supply from seeking any other remedy that may be provided at law or in equity.*