

**Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017**

HOUSE BILL NO. 1409
(Representative M. Nelson)

AN ACT to amend and reenact section 38-11.2-07 of the North Dakota Century Code, relating to well water testing preceding subsurface mineral production and liability for damages to water supplies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-11.2-07 of the North Dakota Century Code is amended and reenacted as follows:

38-11.2-07. Protection of surface and ground water - Other responsibilities of mineral developer.

1. The mineral developer shall conduct or have conducted an inventory of water wells located within one-half mile [804.67 meters] of where subsurface mineral exploration activities are conducted, if such exploration activities appear reasonably likely to encounter ground water, or within one mile [1.61 kilometers] of a subsurface mineral production site.
2. The mineral developer shall conduct or have conducted a certified water quality and quantity test within one year preceding the commencement of subsurface mineral production operations on each water well or water supply located on the involved real property and as identified by the surface owner of that real property. Results of water quality tests conducted under this subsection must be reported in a prescribed format to the state department of health, which shall maintain a database of the results. The water quality test must be collected as prescribed by the department of health and analyzed by a state-certified laboratory.
3. If the domestic, livestock, or irrigation water supply of any person who owns an interest in real property within one-half mile [804.67 meters] of where subsurface mineral exploration activities are or have been conducted or within one mile [1.61 kilometers] of a subsurface mineral production site has been disrupted, or diminished in quality or quantity by the drilling operations, the person who owns an interest in real property is entitled to recover the cost of making such repairs, alterations, or construction that will ensure the delivery to the surface owner of that quality and quantity of water available to the surface owner prior to the commencement of drilling operations.
4. Any person who owns an interest in real property who obtains all or a part of that person's water supply for domestic, agricultural, industrial, or other beneficial use has a claim for relief against a mineral developer to recover damages for disruption or diminution in quality or quantity of that person's water supply proximately caused from drilling operations conducted by the mineral developer.
5. Prima facie evidence of injury under this section may be established by a showing that the mineral developer's drilling operations penetrated or disrupted an aquifer in such a manner as to cause a diminution in water quality or quantity within the distance limits imposed by this section, or by showing the mineral developer did not conduct or have conducted the testing required under subsection 2.
6. If a person refuses to consent to the testing of a water well or water supply on land owned by the person, as required under subsection 2, the person forfeits any claim for relief under subsection 3 or 4.

- 7. An action brought under this section when not otherwise specifically provided by law must be brought within six years of the time the action has accrued. For purposes of this section, the claim for relief is deemed to have accrued at the time it is discovered or might have been discovered in the exercise of reasonable diligence.
- ~~7.8.~~ A tract of land is not bound to receive water contaminated by drilling operations on another tract of land and the owner of a tract has a claim for relief against a mineral developer to recover the damages proximately resulting from natural drainage of waters contaminated by drilling operations.
- ~~8.9.~~ The mineral developer is also responsible for all damages to person or property resulting from the lack of ordinary care by the mineral developer or resulting from a nuisance caused by drilling operations.
- ~~9.10.~~ This section does not create a cause of action if an appropriator of water can reasonably acquire the water under the changed conditions and if the changed conditions are a result of the legal appropriation of water by the mineral developer.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1409.

House Vote: Yeas 89 Nays 3 Absent 2

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2017.

Approved at _____ M. on _____, 2017.

Governor

Filed in this office this _____ day of _____, 2017,

at _____ o'clock _____ M.

Secretary of State