

FREQUENTLY ASKED QUESTIONS

Presumptive Liability for Pollution of Water Supplies During Well Plugging 58 Pa.C.S. § 3218 (relating to protection of water supplies)

The purpose of this Frequently Asked Questions (FAQ) document is to address questions about the Department's regulations. This FAQ should not be used in lieu of reference to the 2012 Oil and Gas Act, 25 Pa.Code Chapter 78 and other applicable laws and regulations. The answers outlined in this FAQ are intended to supplement existing requirements. Nothing in this document shall affect statutory or regulatory requirements.

This document is not an adjudication or a regulation. There is no intent on the part of the Department to give this document that weight or deference. The Department may supplement or amend this document at any time as necessary without notice.

- 1) Do the presumption of liability provisions for pollution of a water supply in Section 3218(c) of the 2012 Oil and Gas Act, 58 Pa.C.S. § 3218(c), apply in a situation where a water supply is impacted by plugging a well?

§ 3218. Protection of Water Supplies

(a) General rule – In addition to the requirements of subsection (c.1), a well operator who affects a public or private water supply by pollution or diminution shall restore or replace the affected supply with an alternate source of water adequate in quantity or quality for the purposes served by the supply. The department shall ensure that the quality of a restored or replaced water supply meets the standards established under the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, or is comparable to the quality of the water supply before it was affected by the operator if that water supply exceeded those standards. The Environmental Quality Board shall promulgate regulations necessary to meet the requirements of this subsection.

(b) Pollution or diminution of water supply – A landowner or water purveyor suffering pollution or diminution of a water supply as a result of the drilling, 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 notification, the department shall investigate the claim and make a determination within 45 days following notification. If the department finds that the pollution or diminution was caused by drilling, alteration or operation activities or if it presumes the well operator responsible for pollution under subsection (c), the department shall issue orders to the well operator necessary to assure compliance with subsection (a), including orders requiring temporary replacement of a water supply where it is determined that pollution or diminution maybe of limited duration.

(c) Presumption – Unless rebutted by a defense established in subsection (d), it shall be presumed that a well operator is responsible for pollution of a water supply if: (1) except

as set forth in paragraph (2): (i) the water supply is within 1,000 feet of an oil or gas well; and (ii) the pollution occurred within six months after completion of drilling or alteration of the oil or gas well; or (2) in the case of an unconventional well: (i) the water supply is within 2,500 feet of the unconventional vertical well bore; and (ii) the pollution occurred within 12 months of the later of completion, drilling, stimulation or alteration of the unconventional well.

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Answer:

No. The presumption of liability established by Section 3218(c) of the 2012 Oil and Gas Act is not applicable to pollution of a water supply resulting from plugging a well.

Under Section 3218(c)(1), a conventional well operator is presumed responsible for pollution of a water supply if the water supply is within 1,000 feet of the conventional well when the pollution occurred within six months after the completion of drilling or alteration of the conventional well. 58 Pa.C.S. § 3218(c)(1). Under Section 3218(c)(2), an unconventional well operator is presumed responsible for pollution of a water supply if the water supply is within 2,500 feet of the unconventional vertical well bore and the pollution occurred within 12 months of the later of completion, drilling, stimulation or alteration of the unconventional well. 58 Pa.C.S. § 3218(c)(2). The presumption of liability does not apply to plugging activities because plugging is not included in the list of activities that trigger the presumption of liability.

The Department does have the authority to require a well operator to replace or restore a water supply impacted by plugging a well under Section 3218(a) of the 2012 Oil and Gas Act (58 Pa.C.S § 3218(a)), The Clean Streams Law (35 P.S. §§ 641.1-691.1001), The Hazardous Sites Cleanup Act 108 (35 P.S. § 6020.101) and The Land Recycling and Environmental Remediation Standards Act 2 (35 P.S. § 6026.101 *et seq.*).

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