

## Chapter 703

(House Bill 1123)

AN ACT concerning

### **Environment – Presumptive Impact Areas – ~~Damage~~ Contamination Caused by Gas Wells in Deep Shale Deposits**

FOR the purpose of establishing for certain gas well permits a certain presumptive impact area around the gas well; establishing limits on the area and the time period in which a presumptive impact area shall be in effect; requiring the Department of the Environment to consider certain factors in making certain determinations; requiring a permittee to replace a certain water supply ~~and repair certain damage or pay monetary compensation to a certain property owner in a presumptive impact area~~ under certain circumstances; establishing certain conditions under which a certain water supply within a presumptive impact area shall be considered to be replaced adequately by the permittee; ~~establishing a certain condition under which certain property damage within a presumptive impact area shall be considered to be repaired adequately by the permittee; requiring a permittee to pay certain compensation to a certain property owner under certain circumstances;~~ authorizing the permittee to avoid restoration under certain circumstances; prohibiting the Department from requiring a permittee to replace a water supply ~~or repair~~ or compensate an owner ~~for other damage~~ under certain circumstances; ~~requiring~~ authorizing the Department to adopt certain regulations; establishing that a certain presumption of causation does not apply under certain circumstances; providing that a certain presumption of causation applies in certain civil actions; providing that the presumption may be rebutted by ~~clear and convincing~~ a preponderance of the evidence; ~~stating certain legislative findings and intent;~~ defining a certain term; providing for the construction of this Act; and generally relating to ~~damage~~ contamination caused by certain activities of gas exploration or production.

BY adding to

Article – Environment

Section 14-110.1 ~~and 14-110.2~~

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

#### **Article – Environment**

## 14-110.1.

~~(A) THE GENERAL ASSEMBLY FINDS THAT:~~

~~(1) IN CERTAIN REGIONS OF THE STATE ACTIVITIES RELATING TO EXPLORATION FOR OR PRODUCTION OF GAS FROM DEEP SHALE DEPOSITS HAVE THE POTENTIAL TO CONTAMINATE WATER SUPPLY WELLS SOURCES AND TO RESULT IN OTHER DAMAGE TO LANDOWNERS IN THE VICINITY OF A GAS WELL; AND~~

~~(2) IT IS REASONABLE TO PRESUME THAT ACTIVITIES OF GAS EXPLORATION AND PRODUCTION ARE THE CAUSE OF CONTAMINATION OF A WATER SUPPLY WELL SOURCE WITH METHANE OR OTHER POLLUTANTS AND OTHER DAMAGE IF:~~

~~(i) THE WATER SUPPLY WELL SOURCE IS WITHIN 2,640 2,500 FEET OF THE VERTICAL WELLBORE; AND~~

~~(ii) THE CONTAMINATION OCCURS WITHIN 365 DAYS OF THE LAST EVENT OF WELL DRILLING, COMPLETION, OR HYDRAULIC FRACTURING.~~

~~(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROTECT AFFECTED PROPERTY OWNERS IN AREAS OF THE STATE WHERE DEEP SHALE DEPOSITS, INCLUDING THE MARCELLUS SHALE AND THE UTICA SHALE, ARE FOUND BY ESTABLISHING PRESUMPTIVE IMPACT AREAS AROUND GAS WELLS AND REQUIRING THE DEPARTMENT TO ADMINISTER A PROGRAM REQUIRING PERMITTEES TO REPAIR DAMAGE REPLACE CONTAMINATED WATER SUPPLIES SUPPLY SOURCES OR COMPENSATE AFFECTED PROPERTY OWNERS IN THOSE AREAS.~~

~~14-110.2.~~

~~(A) IN THIS SECTION, "WATER SUPPLY SOURCE" MEANS A WELL, SPRING, SPRING FED POND, RESERVOIR, STREAM, OR ANY OTHER SOURCE OF WATER USED FOR DRINKING OR FOR LIVESTOCK SOURCE OF WATER USED FOR DRINKING OR OTHER DOMESTIC PURPOSE OR FOR AGRICULTURE, INCLUDING LIVESTOCK.~~

~~(B) FOR EACH PERMIT THE DEPARTMENT ISSUES UNDER THIS SUBTITLE TO DRILL A WELL FOR THE EXPLORATION OR PRODUCTION OF GAS IN DEEP SHALE DEPOSITS, THERE IS A PRESUMPTIVE IMPACT AREA AROUND THE GAS WELL IN WHICH IT IS PRESUMED THAT CONTAMINATION OF A WATER~~

~~SUPPLY WELL SOURCE AND OTHER DAMAGE TO REAL OR PERSONAL PROPERTY WERE~~ WAS CAUSED BY THE ACTIVITIES OF GAS EXPLORATION OR PRODUCTION.

~~(B)~~ (C) THE PRESUMPTIVE IMPACT AREA SHALL BE IN EFFECT:

(1) WITHIN A RADIUS OF ~~2,640~~ 2,500 FEET FROM THE VERTICAL WELLBORE; AND

(2) FOR 365 DAYS AFTER THE LAST EVENT OF WELL DRILLING, COMPLETION, OR HYDRAULIC FRACTURING.

~~(C)~~ (D) WITHIN A PRESUMPTIVE IMPACT AREA ESTABLISHED UNDER SUBSECTIONS ~~(A)~~ (B) AND ~~(B)~~ (C) OF THIS SECTION, THE PERMITTEE SHALL:

~~(1) REPLACE~~ REPLACE, AT NO EXPENSE TO AN OWNER OF REAL PROPERTY IN THE PRESUMPTIVE IMPACT AREA, A WATER SUPPLY THAT IS ~~DAMAGED~~ CONTAMINATED AS A RESULT OF THE PERMITTEE'S DRILLING OR OPERATION OF THE GAS WELL; ~~AND~~

~~(2) ON A DETERMINATION BY THE DEPARTMENT OF PROXIMATE CAUSE AFTER THE PERMITTEE HAS RECEIVED NOTICE AND AN OPPORTUNITY TO RESPOND AND PROVIDE INFORMATION, PAY MONETARY COMPENSATION TO AN AFFECTED PROPERTY OWNER, OR REPAIR ANY PROPERTY DAMAGE CAUSED AS A RESULT OF THE DRILLING OR OPERATION OF THE PERMITTEE'S GAS WELL.~~

~~(D)~~ (E) A WATER SUPPLY WITHIN A PRESUMPTIVE IMPACT AREA THAT NO LONGER YIELDS POTABLE WATER AS A RESULT OF THE DRILLING OR OPERATION OF A GAS WELL SHALL BE CONSIDERED TO BE REPLACED ADEQUATELY BY A PERMITTEE IF THE PERMITTEE PROVIDES FOR THE AFFECTED PROPERTY OWNER A NEW OR RETROFITTED WELL OR OTHER ALTERNATIVE WATER SUPPLY THAT IS CAPABLE OF YIELDING POTABLE WATER EQUAL TO THE VOLUME USED OR NEEDED BY THE PROPERTY OWNER BEFORE THE ~~DAMAGE TO~~ CONTAMINATION OF THE WATER SUPPLY.

~~(E)~~ (F) ~~(1) REAL OR PERSONAL PROPERTY WITHIN A PRESUMPTIVE IMPACT AREA FOUND BY THE DEPARTMENT TO HAVE BEEN DAMAGED AS A RESULT OF THE DRILLING OR OPERATION OF A GAS WELL SHALL BE CONSIDERED TO BE REPAIRED ADEQUATELY BY A PERMITTEE IF THE PERMITTEE RETURNS THE DAMAGED PROPERTY TO ITS CONDITION BEFORE THE DAMAGE.~~

~~(2) IF THE DAMAGED REAL OR PERSONAL PROPERTY IS NOT CAPABLE OF BEING RESTORED TO ITS CONDITION BEFORE THE DAMAGE, THE PERMITTEE SHALL COMPENSATE THE OWNER OF THE REAL OR PERSONAL~~

~~PROPERTY MONETARILY BY THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE PROPERTY AS THE PROPERTY WOULD EXIST BUT FOR THE DAMAGE AND THE FAIR MARKET VALUE OF THE PROPERTY AS A RESULT OF THE DAMAGE.~~

~~(3)~~ ~~NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SUBSECTION, THE~~ THE PERMITTEE AND THE PROPERTY OWNER MAY AGREE ON MONETARY COMPENSATION OR OTHER MITIGATION INSTEAD OF RESTORATION.

~~(F)~~ (G) THE DEPARTMENT MAY NOT REQUIRE A PERMITTEE TO REPLACE A WATER SUPPLY ~~OR REPAIR~~ OR COMPENSATE ~~AN~~ A PROPERTY OWNER FOR OTHER DAMAGE, AS PROVIDED IN THIS SECTION, IF THE PERMITTEE DEMONSTRATES TO THE DEPARTMENT BY ~~CLEAR AND CONVINCING~~ A PREPONDERANCE OF THE EVIDENCE THAT:

(1) THE ~~PROXIMATE CAUSE OF THE DAMAGE~~ CONTAMINATION IS NOT THE RESULT OF ACTIVITIES RELATING TO THE GAS WELL; OR

(2) THE CONTAMINATION ~~OR DAMAGE~~ EXISTED BEFORE THE COMMENCEMENT OF ACTIVITIES ALLOWED BY THE PERMIT AND WAS NOT WORSENER BY THOSE ACTIVITIES.

~~(G)~~ (H) THE DEPARTMENT ~~SHALL~~ MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

~~(H)~~ (I) THE PRESUMPTION OF CAUSATION ESTABLISHED UNDER THIS SECTION DOES NOT APPLY TO CONTAMINATION OF A WATER SUPPLY ~~WELL SOURCE~~ SOURCE IF:

(1) THE PERMIT APPLICANT REQUESTS THE PERMISSION OF THE ~~LANDOWNER~~ PROPERTY OWNER TO SAMPLE AND TEST THE WATER SUPPLY ~~WELL SOURCE~~ BEFORE COMMENCEMENT OF ACTIVITIES AND TO PROVIDE THE ~~LANDOWNER~~ PROPERTY OWNER WITH A COMPLETE COPY OF THE TEST RESULTS; AND

(2) THE ~~LANDOWNER~~ PROPERTY OWNER REFUSES PERMISSION.

~~(I)~~ (J) THIS SECTION MAY NOT BE CONSTRUED TO AFFECT ANY COMMON LAW REMEDIES AVAILABLE TO A PROPERTY OWNER.

~~(J)~~ (K) (1) THE PRESUMPTION OF CAUSATION ESTABLISHED UNDER THIS SECTION SHALL APPLY IN:

(I) A PROCEEDING FOR JUDICIAL REVIEW UNDER § 14-117 OF THIS SUBTITLE;

(II) AN ACTION FOR AN INJUNCTION UNDER § 14-118 OF THIS SUBTITLE; OR

(III) A CIVIL ACTION FOR DAMAGES OR EQUITABLE RELIEF BROUGHT BY A PROPERTY OWNER AGAINST A PERMITTEE.

(2) THE PRESUMPTION MAY BE REBUTTED BY ~~CLEAR AND CONVINCING~~ A PREPONDERANCE OF THE EVIDENCE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2012.

Approved by the Governor, May 22, 2012.