

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1409

Introduced by

Representative M. Nelson

1 A BILL for an Act to amend and reenact section 38-11.2-07 of the North Dakota Century Code,
2 relating to well water testing preceding subsurface mineral production and liability for damages
3 to water supplies.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **38-11.2-07. Protection of surface and ground water - Other responsibilities of mineral**
8 **developer.**

- 9 1. The mineral developer shall conduct or have conducted an inventory of water wells
10 located within one-half mile [804.67 meters] of where subsurface mineral exploration
11 activities are conducted, if such exploration activities appear reasonably likely to
12 encounter ground water, or within one mile [1.61 kilometers] of a subsurface mineral
13 production site.
- 14 2. The mineral developer shall conduct or have conducted a certified water quality and
15 quantity test within one year preceding the commencement of subsurface mineral
16 production operations on each water well or water supply located on the involved real
17 property and as identified by the surface owner of that real property. Results of water
18 quality tests conducted under this subsection must be reported in a prescribed format
19 to the state department of health, which shall maintain a database of the results. The
20 water quality test must be collected as prescribed by the department of health and
21 analyzed by a state-certified laboratory.
- 22 3. If the domestic, livestock, or irrigation water supply of any person who owns an
23 interest in real property within one-half mile [804.67 meters] of where subsurface
24 mineral exploration activities are or have been conducted or within one mile [1.61

- 1 kilometers] of a subsurface mineral production site has been disrupted, or diminished
2 in quality or quantity by the drilling operations, the person who owns an interest in real
3 property is entitled to recover the cost of making such repairs, alterations, or
4 construction that will ensure the delivery to the surface owner of that quality and
5 quantity of water available to the surface owner prior to the commencement of drilling
6 operations.
- 7 4. Any person who owns an interest in real property who obtains all or a part of that
8 person's water supply for domestic, agricultural, industrial, or other beneficial use has
9 a claim for relief against a mineral developer to recover damages for disruption or
10 diminution in quality or quantity of that person's water supply proximately caused from
11 drilling operations conducted by the mineral developer.
- 12 5. Prima facie evidence of injury under this section may be established by a showing that
13 the mineral developer's drilling operations penetrated or disrupted an aquifer in such a
14 manner as to cause a diminution in water quality or quantity within the distance limits
15 imposed by this section, or by showing the mineral developer did not conduct or have
16 conducted the testing required under subsection 2.
- 17 6. If a person refuses to consent to the testing of a water well or water supply on land
18 owned by the person, as required under subsection 2, the person forfeits any claim for
19 relief under subsection 3 or 4.
- 20 7. An action brought under this section when not otherwise specifically provided by law
21 must be brought within six years of the time the action has accrued. For purposes of
22 this section, the claim for relief is deemed to have accrued at the time it is discovered
23 or might have been discovered in the exercise of reasonable diligence.
- 24 ~~7-8.~~ A tract of land is not bound to receive water contaminated by drilling operations on
25 another tract of land and the owner of a tract has a claim for relief against a mineral
26 developer to recover the damages proximately resulting from natural drainage of
27 waters contaminated by drilling operations.
- 28 ~~8-9.~~ The mineral developer is also responsible for all damages to person or property
29 resulting from the lack of ordinary care by the mineral developer or resulting from a
30 nuisance caused by drilling operations.

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- 1 ~~9.10.~~ This section does not create a cause of action if an appropriator of water can
- 2 reasonably acquire the water under the changed conditions and if the changed
- 3 conditions are a result of the legal appropriation of water by the mineral developer.