

**§ 113-421. Presumptive liability for water contamination; compensation for other damages; responsibility for reclamation.**

(a) **Presumptive Liability for Water Contamination.** – It shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities unless the presumption is rebutted by a defense established as set forth in subsection (a1) of this subsection. If a contaminated water supply is located within a one-half mile radius of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to a water supply, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(a1) [Rebuttal of Presumption.] In order to rebut a presumption arising pursuant to subsection (a) of this section, an oil or gas developer or operator shall have the burden of proving by a preponderance of the evidence any of the following:

- (1) The contamination existed prior to the commencement of the drilling activities of the oil or gas developer or operator, as evidenced by a pre-drilling test of the water supply in question conducted in conformance with G.S. 113-423(f).
- (2) The surface owner or owner of the water supply in question refused the oil or gas developer or operator access to conduct a pre-drilling test of the water supply conducted in conformance with G.S. 113-423(f).
- (3) The water supply in question is not within a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities.
- (4) The contamination occurred as the result of a cause other than activities of the developer or operator.

(a2) **Compensation for Other Damages Required.** – The oil or gas developer or operator shall be obligated to pay the surface owner compensation for all of the following:

- (1) Any damage to a water supply in use prior to the commencement of the activities of the developer or operator which is due to those activities.
- (2) The cost of repair of personal property of the surface owner, which personal property is damaged due to activities of the developer or operator, up to the value of replacement by personal property of like age, wear, and quality.
- (3) Damage to any livestock, crops, or timber determined according to the market value of the resources destroyed, damaged, or prevented from reaching market due to the oil or gas developer's or operator's activities.

(a3) **Reclamation of Surface Property Required.** – An oil or gas developer or operator shall:

- (1) Reclaim all surface areas affected by its operations no later than two years following completion of the operations. If the developer or operator is not the surface owner of the property, prior to commencement of activities on the property, the oil or gas developer or operator shall provide a bond running to the surface owner sufficient to cover reclamation of the surface owner's property. Upon registration with the Department pursuant to G.S. 113-378, a developer shall request that the Oil and Gas Commission set the amount of the bond required by this subsection. As part of its request, the developer shall provide supporting documentation, including information about the proposed oil and gas activities to be conducted, the site on which they are to occur, and any additional information required by the

Commission. The Commission shall set the amount of the bond in accordance with the criteria adopted by the Commission pursuant to G.S. 113-391(a)(13a) and notify the developer and surface owner of the amount within 30 days of setting the amount of a bond. A surface owner or developer may appeal the amount of a bond set pursuant to this subsection to the Commission within 60 days after receipt of notice from the Commission of the amount required. After evaluation of the appeal and issuance of written findings, the Commission may order that the amount of the bond be modified. Parties aggrieved by a decision of the Commission pursuant to this subsection may appeal the decision as provided under Article 4 of Chapter 150B of the General Statutes within 30 days of the date of the decision.

- (2) Provide a bond running to the State sufficient to cover any potential environmental damage caused by the drilling process in an amount no less than one million dollars (\$1,000,000). The Commission may increase the amount of the bond required by this subdivision if the Commission determines that the drilling operation would be sited in an environmentally sensitive area.

(a4) Remediation Required. – Nothing in this Article shall be construed to obviate or affect the obligation of a developer or operator to comply with any other requirement under law to remediate contamination caused by its activities.

(a5) Replacement Water Supply Required. – If a water supply belonging to the surface owner or third parties is contaminated due to the activities of the developer or operator, in addition to any other remedy available at law or in equity, the developer or operator shall provide a replacement water supply to persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

(b) Time Frame for Compensation. – When compensation is required, the surface owner shall have the option of accepting a one-time payment or annual payments for a period of time not less than 10 years.

(c) Venue. – The surface owner has the right to seek damages pursuant to this section in the superior court for the county in which the oil or gas well is located. The superior court for the county in which the oil or gas well is located has jurisdiction over all proceedings brought pursuant to this section. If the surface owner or the surface owner's assignee is the prevailing party in an action to recover unpaid royalties or other damages owed due to activities of the developer or operator, the court shall award any court costs and reasonable attorneys' fees to the surface owner or the surface owner's assignee.

(d) [Certain Limits Void. –] Conditions precedent, notice provisions, or arbitration clauses included in lease documents that have the effect of limiting access to the superior court in the county in which the oil or gas well is located are void and unenforceable.

(e) Joint and Several Liability. – In order to provide maximum protection for the public interest, any actions brought for recovery of cleanup costs, damages, or for civil penalties brought pursuant to this section or any other section of this Article or rules adopted thereunder may be brought against any one or more of the persons having control over the activities that contributed to the contamination, damage to property, or other violations. All such persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (2011-276, s. 3(b); 2012-143, s. 4(b); 2013-365, s. 5(c); 2014-4, ss. 4(c), 13(a).)