

STATE OF NEW YORK

9533

IN ASSEMBLY

March 16, 2022

Introduced by M. of A. ABINANTI -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, the public health law and the real property law, in relation to enacting the "private well testing act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "private well testing act".

3 § 2. Subdivision 1 of section 3-0315 of the environmental conservation
4 law, as amended by section 12 of part T of chapter 57 of the laws of
5 2017, is amended to read as follows:

6 1. The department in conjunction with the commissioner of health shall
7 create and maintain a geographic information system, and associated data
8 storage and analytical systems for purposes of collecting, streamlining,
9 and visualizing integrated data, permits, and relevant sites about
10 drinking water quality including, but not limited to, incorporating
11 supply well and monitoring well data, emerging contaminant data, water
12 quality monitoring data, pertinent data from remediation and landfill
13 sites, permitted discharge locations and other potential contamination
14 risks to water supplies. Such system shall also incorporate information
15 from the source water assessment program collected by the department of
16 health, information collected pursuant to section eleven hundred eleven
17 of the public health law, data from annual water supply statements
18 prepared pursuant to section eleven hundred fifty-one of the public
19 health law, information from the database pursuant to title fourteen of
20 article twenty-seven of this chapter, and any other existing data
21 regarding soil and groundwater contamination currently gathered by the
22 department, as well as data on contamination that is readily available
23 from the United States geological survey and other sources determined
24 appropriate by the department. In addition to facilitating interagency
25 coordination and predictive analysis to protect water quality, such
26 system shall provide state agency information to the public through a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 website, within reasonable limitations to ensure confidentiality and
2 security.

3 § 3. Section 206 of the public health law is amended by adding a new
4 subdivision 32 to read as follows:

5 32. The commissioner is authorized and directed to promulgate rules
6 and regulations to establish standards for the testing of drinking water
7 from privately owned wells. Such standards shall apply to any water
8 wells subject to subdivision eighteen of this section, as added by chap-
9 ter three hundred ninety-five of the laws of nineteen hundred ninety-
10 nine. Such testing shall be to determine the quality, safety and exist-
11 ing level of contamination of drinking water from privately owned wells.

12 § 4. Subdivision 1 of section 1100 of the public health law, as
13 amended by chapter 655 of the laws of 1978, is amended to read as
14 follows:

15 1. The department may make rules and regulations for the protection
16 from contamination of any or all public or private supplies of potable
17 waters and water supplies of the state or United States, institutions,
18 parks, reservations or posts and their sources within the state, and the
19 commissioner of environmental protection of the city of New York and the
20 board of water supply of the city of New York may make such rules and
21 regulations subject to the approval of the department for the protection
22 from contamination of any or all public or private supplies of potable
23 waters and their sources within the state where the same constitute a
24 part of the source of the public or private water supply of said city.

25 § 5. The public health law is amended by adding a new section 1111 to
26 read as follows:

27 § 1111. Private well testing. 1. (a) The department shall promulgate
28 regulations providing for the testing of drinking water from private
29 wells located on real property subject to this section.

30 (b) Any contract for the sale of real property, including a multiple
31 family dwelling as defined in section eight hundred two of the executive
32 law, which is served by a private well that is the potable water supply
33 for such property shall include a provision requiring as a condition of
34 sale, the testing of such water supply for at least the standards
35 prescribed pursuant to this section. Provisions of this section shall
36 not apply to property where the potable water supply has five or more
37 service connections or that regularly serves an average of twenty-five
38 or more individuals daily for at least sixty days out of the year.

39 (c) Water sampling shall be done, preferably by a laboratory certified
40 by the department, in the following manner:

41 (i) if there is no water treatment system in use on the water well
42 being tested, samples shall be collected from a primary cold water,
43 non-aerated spigot or tap that draws from or feeds water to the potable
44 water system from such water;

45 (ii) where a water treatment system is in use on the water supply
46 system, the sample shall be collected as follows:

47 (A) the water treatment system shall be disconnected or otherwise
48 disabled prior to the collection of the water sample; or

49 (B) the sample shall be collected at a location prior to the water
50 treatment system; or

51 (iii) in the case of a new well construction and installation where
52 there is no spigot or tap on the subject property, the sample may be
53 collected directly at the wellhead, utilizing a raw water sample.

54 2. Every water test conducted in accordance with this section shall be
55 conducted by a laboratory certified by the department pursuant to
56 section five hundred two of this chapter to test for drinking water

1 constituents and shall include but not be limited to a test for at least
2 the following constituents: bacteria (total coliform); sodium; nitrites;
3 nitrites; iron; manganese; iron plus manganese; pH; copper; chloride;
4 all volatile organic compounds for which maximum constituent levels have
5 been established pursuant to public health regulations; and lead.

6 3. (a) The department, in consultation with the department of environ-
7 mental conservation, and local health organizations established pursuant
8 to article three of this chapter may require additional testing for
9 constituents that appear on a county or regional basis including but not
10 limited to arsenic, barium, fluoride, mercury, methane, radium, and
11 radon.

12 (b) The department may, by rule or regulation, exclude or limit by
13 geographic area or geologic formation, or based upon well recorded
14 information, any constituent listed in this section deemed by the
15 department as not significant in a county or in any specific area within
16 a county and such area or formation need not be tested as part of any
17 water test conducted in accordance with this section.

18 (c) For each constituent to be tested for in accordance with this
19 section, the department shall establish, by regulation a maximum time
20 period for which a test result shall remain valid for the purposes of
21 this section without necessitating retesting for such constituent;
22 provided, however, such time period shall not exceed twelve months. A
23 retest of the water supply shall not be required pursuant to this
24 section if the contract of sale is entered into within the period of
25 test validity established pursuant to this paragraph. Notwithstanding
26 any provision of this paragraph to the contrary, a buyer and seller
27 subject to the provisions of this section may mutually agree to retest
28 for a constituent even though the maximum time period for test validity
29 for the constituent established pursuant to this section has not
30 expired.

31 4. (a) Any water test results provided by a laboratory to the person
32 or persons requesting the test shall include the maximum constituent
33 levels or other established water quality standards, if any, prescribed
34 by the department for each constituent tested and shall be transmitted
35 on a standardized private well water test reporting form prescribed by
36 the department. The form shall refer the buyer and seller of the real
37 property in question to the appropriate office or person within the
38 department, or the department's website for information regarding reme-
39 diation alternatives.

40 (b) Within ten business days after completion of the water test, a
41 laboratory shall submit the water test results to the department with
42 the following information:

43 (i) a statement that the testing is for the purpose of complying with
44 the "private well testing act";

45 (ii) the location of the real property, described by block and lot
46 number, street address, municipality, and county;

47 (iii) the name and mailing address of the person or persons making the
48 request for the test;

49 (iv) an affidavit stating the date and time that the water sample was
50 collected and the specific point of collection and the legal name and
51 mailing address of the person or persons collecting the raw water
52 samples;

53 (v) the date and time the sample was analyzed by the laboratory; and

54 (vi) such other information as may be required by the department, in
55 consultation with the department of environmental conservation and

1 appropriate local health organizations established pursuant to article
2 three of this chapter.

3 (c) The department may require laboratories to submit electronically
4 the information required pursuant to paragraph (b) of this subdivision.

5 (d) A laboratory shall not release water test results to any person
6 except the buyer or seller of the real property at issue as provided in
7 subdivision one of this section, the lessor of the real property as
8 provided in subdivision six of this section, any person authorized by
9 the buyer, seller, or lessor, as the case may be, the department, or any
10 person designated by court order.

11 (e) The department shall make the data accumulated from the water test
12 results submitted by laboratories pursuant to this section available to
13 counties, municipalities, or other governmental entities for the
14 purposes of studying groundwater supplies or contamination in the state;
15 provided, however, that identifying information is removed.

16 (f) The results of water well tests shall be provided to the depart-
17 ment of environmental conservation for inclusion in the statewide
18 groundwater remediation strategy developed in accordance with section
19 15-3109 of the environmental conservation law and the geographic infor-
20 mation system developed in accordance with section 3-0315 of the envi-
21 ronmental conservation law.

22 5. The department, within ten business days after receiving any report
23 of a water test failure in accordance with this section, shall provide
24 notice of such water test failure to the appropriate local health organ-
25 izations established pursuant to article three of this chapter. The
26 appropriate local health organizations established pursuant to article
27 three of this chapter shall issue a general notice to owners of real
28 property served by private wells or a public water system located in the
29 vicinity of the real property experiencing the water test failure
30 suggesting or recommending that those property owners may wish to have
31 their private wells tested for at least the constituents at issue. The
32 specific address or location of the private well that failed a water
33 test shall not be identified in the notice or by any other means or in
34 any other manner. The department shall establish criteria for notifica-
35 tion which may include, but shall not be limited to, the maximum
36 constituent level, the level of exceedance reported, and the distance or
37 location of the properties or public water supply in the vicinity of the
38 contaminated well for which testing is recommended.

39 6. Within two years after the effective date of this section, and at
40 least once every five years thereafter, the lessor of any real property
41 the potable water supply for which is a private well shall test that
42 water supply in the manner established pursuant to this section for at
43 least the constituents required pursuant to subdivisions two and three
44 of this section. Within thirty days after the receipt of the test
45 results, the lessor shall also provide a written copy thereof to each
46 lessee of a rental unit on the property. The lessor shall also provide a
47 written copy of the most recent test results to a prospective tenant
48 prior to the signing of a lease of a rental unit on the property.

49 7. (a) The department, in consultation with the department of environ-
50 mental conservation, and local health organizations established pursuant
51 to article three of this chapter shall establish a public information
52 and education program to inform the public and appropriate professional
53 disciplines of the enactment of this section and the substance of its
54 provisions and requirements, the potential health effects of consuming
55 water from a private well that does not meet maximum constituent levels
56 and other established water quality standards, the potential presence of

1 radium in at least some potable groundwater supplies in the state, the
2 geographic areas in the state subject to an actual or potential threat
3 of danger from contaminated groundwater, the importance of testing
4 private wells regularly for constituents, and suggested water treatment
5 techniques, equipment strategies and public funding sources available
6 for treating water from private wells that have failed a water test
7 conducted in accordance with this section.

8 (b) The department shall make available to the public a general compi-
9 lation of water test results data arranged or identified by county and
10 municipality or appropriate geographic area therein, but which does not
11 include specific address or location information.

12 8. Within three years of the effective date of this section, the
13 department shall prepare and transmit to the governor and legislature a
14 report on the implementation and operation of this section. Such report
15 shall also describe the benefits and deficiencies realized as a result
16 of this section and include recommendations for any appropriate legisla-
17 tive action. The report shall also be made available to the public and
18 be posted on the department's website.

19 § 6. The real property law is amended by adding a new section 468 to
20 read as follows:

21 § 468. Private well testing requirements. 1. Every contract for the
22 sale of real property, including a multiple family dwelling as defined
23 in section eight hundred two of the executive law, which is served by a
24 private well that is the potable water supply for such property shall
25 include a provision requiring as a condition of sale, the testing of
26 such water supply for at least the standards prescribed pursuant to
27 section eleven hundred eleven of the public health law. Provisions of
28 this section shall not apply to property where the potable water supply
29 has five or more service connections or that regularly serves an average
30 of twenty-five or more individuals daily for at least sixty days out of
31 the year.

32 2. Closing of title on the sale of such real property shall not occur
33 unless both the buyer and the seller have received and reviewed a copy
34 of the water test results. At closing, the buyer and seller both shall
35 certify in writing that they have received and reviewed the water test
36 results.

37 3. The requirements of this section may not be waived.

38 § 7. This act shall take effect on the one hundred eightieth day after
39 it shall have become a law. Effective immediately, the addition, amend-
40 ment and/or repeal of any rule or regulation necessary for the implemen-
41 tation of this act on its effective date are authorized to be made on or
42 before such effective date.