S T A T E O F N E W Y O R K

5078

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to preparing water supply emergency plans

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 1125 of the public health law, as amended by chapter 405 of the laws of 2002, paragraph (b) of subdivision 1 and subdivision 5 as amended and subdivision 8 as added by chapter 317 of the laws of 2007, is amended to read as follows:

S 1125. Water supply emergency plans. 1. Definitions. As used in this title:

(a) "Water supply emergency plan" shall mean a plan REVIEWED AND approved by the commissioner and filed with the department. The plan shall follow a form which shall be specified by the department and which shall include, but not be limited to, those items enumerated in this section, and shall address those actions to be taken by a water supplier OR COMMUNITY WATER SUPPLIER PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION to anticipate emergencies and respond responsibly to emergency situations. THE DEPARTMENT SHALL RETAIN A RECORD OF ALL WATER SUPPLIERS REQUIRED TO FILE SUCH A PLAN UNDER SUBPARAGRAPHS ONE AND TWO OF PARAGRAPH (B) OF THIS SUBDIVISION.

(b) "Water supplier" shall mean (1) any person who owns or operates a community water system that supplies drinking water to [more than] three thousand three hundred people OR MORE; OR (2) ANY PERSON WHO OWNS OR OPERATES A COMMUNITY WATER SYSTEM THAT SUPPLIES FEWER THAN THREE THOUSAND THREE HUNDRED PEOPLE, WHO HAS BEEN REQUIRED BY THE APPROPRIATE COUNTY HEALTH DEPARTMENT OR THE STATE HEALTH DEPARTMENT TO COMPLETE A WATER SUPPLY EMERGENCY PLAN. SUCH REQUIREMENT SHALL BE BASED ON A REVIEW OF THE ANNUAL DRINKING WATER SUPPLY STATEMENT PREPARED PURSUANT TO SECTION ELEVEN HUNDRED FIFTY-ONE OF THIS ARTICLE, ANY PLAN FOR MUTUAL

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

LBD01201-01-9

AID FOR WATER SERVICE PREPARED PURSUANT TO SECTION ONE HUNDRED TWENTY-U OF THE GENERAL MUNICIPAL LAW, WHICH SHALL BE MADE AVAILABLE FOR REVIEW AT THE REQUEST OF THE COUNTY OR STATE HEALTH DEPARTMENT, AND OTHER ADDITIONAL MATERIALS THAT THE STATE OR COUNTY HEALTH DEPARTMENT SHALL NEED TO MAKE SUCH A DETERMINATION. AFTER SUCH REVIEW, THE STATE OR COUNTY HEALTH DEPARTMENT MAY, AT THE DISCRETION OF EITHER ENTITY, REQUIRE A WATER SUPPLY EMERGENCY PLAN BE FILED BY SUCH PERSON. IN THE EVENT THAT A COUNTY HEALTH DEPARTMENT REQUIRES A PLAN UNDER THIS SUBPARAGRAPH, SUCH COUNTY DEPARTMENT SHALL NOTIFY THE STATE HEALTH DEPARTMENT IN WRITING WITH THE REASONS FOR SUCH DETERMINATION.

2. All water suppliers shall prepare a water supply emergency plan; provided, however, if more than one water supplier is responsible for the same system, such plan shall be submitted jointly by such two or more water suppliers. The plan shall identify and outline the steps necessary to ensure that potable water is available during a water supply emergency. The water supply emergency plan shall include, but not be limited to, the following:

(a) establishment of criteria and procedures to determine critical water levels or safe yield of system,

(b) identification of existing and future sources of water under normal conditions and emergency conditions,

(c) system capacity and ability to meet peak demand and fire flows concurrently,

(d) storage capacities,

(e) current condition of present interconnections and identification of additional interconnections to meet a water supply emergency,

(f) specific action plan to be followed during a water supply emergency including a phased implementation of the plan,

(g) general water conservation programs and water use reduction strategies for water supply emergencies,

(h) prioritization of water users,

(i) identification and availability of emergency equipment needed during a water supply emergency,

(j) public notification program coordinated with the phased implementation schedule, and

(k) a vulnerability analysis assessment, including an analysis of vulnerability to terrorist attack, which shall be made after consultation with local and state law enforcement agencies.

3. All water suppliers shall, prior to the final submission of the water supply emergency plan, publish a notice in a newspaper of general circulation in the area served by the community water system stating that the proposed water emergency plan is available for review and comment; provided, however, a water supplier shall exempt from public disclosure for public review and comment any information it determines to pose a security risk to operation of the water supply system. Such notice shall be printed at least once in each of two successive weeks and the water supplier shall accept public comment for at least fourteen days following the date of the first publication. The water supplier shall submit all public comments with the water emergency plan to the department.

4. Water supply emergency plans shall be submitted to the commissioner on or before December thirty-first, nineteen hundred ninety. All water suppliers who have previously submitted emergency water supply plans which were approved by the commissioner prior to the effective date of this title are exempt from the provisions of this subdivision. The commissioner shall retain a copy of each water supply emergency plan.

5. Every water supplier shall review, and if necessary, revise its water supply emergency plan and report its findings to the commissioner by December thirty-first, nineteen hundred ninety-five. Any water supplier whose water supply emergency plan does not include an analysis of vulnerability to terrorist attack, shall revise its emergency plan and report its findings to the commissioner by January first, two thousand three. Every water supplier shall keep its water supply emergency plan up to date, shall provide updated communication and notification information to the commissioner by December thirty-first of every year, and shall submit its water supply emergency plan to the commissioner for review at least once every five years and within thirty days after major water facility infrastructure changes have been made.

6. (A) THE COMMISSIONER SHALL, AND A COUNTY HEALTH DEPARTMENT MAY, PROVIDE GUIDANCE AND ASSISTANCE TO COMMUNITY WATER SYSTEMS ON CONDUCTING VULNERABILITY ASSESSMENTS, PREPARING WATER SUPPLY EMERGENCY PLANS AND ADDRESSING THREATS FROM TERRORIST ATTACKS OR OTHER INTENTIONAL ACTIONS DESIGNED TO DISRUPT THE PROVISION OF SAFE DRINKING WATER OR SIGNIFICANTLY AFFECT THE PUBLIC HEALTH OR SIGNIFICANTLY AFFECT THE SAFETY OR SUPPLY OF DRINKING WATER PROVIDED TO COMMUNITIES OR INDIVIDUALS.

(B) A COMMUNITY WATER SYSTEM THAT IS NOT A WATER SUPPLIER AS DEFINED UNDER PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION MAY ELECT TO COMPLETE A WATER SUPPLY EMERGENCY PLAN. SUCH COMMUNITY WATER SYSTEM MAY ELECT TO SUBMIT THE PLAN TO THE COMMISSIONER FOR APPROVAL. IN SUCH A CASE, THE COMMISSIONER SHALL SUBJECT THE PLAN TO SUCH APPROVAL PROCESS AS DESCRIBED UNDER PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION.

7. The commissioner, in his OR HER discretion, may provide an opportunity for public hearing for persons served by a community water system.

[7] 8. The commissioner shall make such rules and regulations which may be necessary to effectuate the purposes of this title.

[8] 9. The commissioner shall keep confidential: (a) all vulnerability analysis assessments and all information derived therefrom; and (b) all information determined by a water supplier to pose a security risk to the operation of a water supply system. Such assessments and information shall be exempt from disclosure under article six of the public officers law. A person who, without authorization, discloses any such assessment or information to another person who has not been authorized to receive such assessment or information is guilty of a class A misdemeanor.

S 2. Section 1103 of the public health law, as amended by chapter 528 of the laws of 2008, is amended to read as follows:

S 1103. Violation; penalties. 1. If a person or entity willfully violates any rule or regulation OF THE DEPARTMENT promulgated pursuant to section one thousand one hundred of this title relating to a temporary or permanent source or act of contamination, OR RESULTING IN CONTAMINATION OF ANY PUBLIC SUPPLIES OF POTABLE WATERS AND WATER SUPPLIES OF THE STATE OR UNITED STATES, INSTITUTIONS, PARKS, RESERVATIONS OR POSTS AND THEIR SOURCES WITHIN THE STATE, such person or entity violating such rule or regulation shall be liable to prosecution for a misdemeanor for every such violation, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars PER DAY, or imprisonment not exceeding one year, or both. EACH DAY ON WHICH A VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE INCIDENT.

2. [If a person or entity violates any rule or regulation promulgated pursuant to section one thousand one hundred of this title relating to a temporary or permanent source or act of contamination, the department may impose a civil penalty for the violation thereof or the noncompli-

ance therewith, not exceeding two hundred dollars for every such violation or noncompliance] IF A PERSON VIOLATES SUBDIVISION ONE OF THIS SECTION AND AS A RESULT THEREOF, SUCH CONTAMINATION ENDANGERS THE PUBLIC HEALTH, SAFETY OR THE ENVIRONMENT, SUCH PERSON SHALL BE LIABLE TO PROSECUTION FOR A MISDEMEANOR FOR EVERY SUCH VIOLATION, AND ON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE NOT EXCEEDING ONE THOUSAND DOLLARS PER DAY, OR IMPRISONMENT NOT EXCEEDING ONE YEAR, OR BOTH. EACH DAY ON WHICH SUCH VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE INCIDENT.

3. For purposes of calculating the applicable civil penalty under this section, each day on which such violation occurred may be considered a separate incident. In addition, a court may order such person or entity to make reparations for any permanent and/or substantial damage caused as a direct result of such violation. For purposes of subdivision one of this section, restitution and reparation may be ordered in accordance with applicable provisions of the criminal procedure law.

4. IN ADDITION TO ANY PENALTY IMPOSED UPON A PERSON FOUND GUILTY PURSUANT TO SUBDIVISION TWO OF THIS SECTION, SUCH PERSON MAY BE ORDERED BY THE COMMISSIONER OR THE COURT TO MAKE REPARATIONS FOR ANY PERMANENT AND/OR SUBSTANTIAL DAMAGE CAUSED AS A RESULT OF SUCH VIOLATION. SUCH REPARATIONS SHALL BE OF SUCH KIND, NATURE AND EXTENT AS WILL REASONABLY RESTORE THE AREA AFFECTED BY THE VIOLATION TO ITS CONDITION IMMEDIATELY BEFORE THE VIOLATION AND MAY BE MADE BY PHYSICAL RESTORATION OR BY THE ASSESSMENT OF A MONETARY PAYMENT TO MAKE SUCH RESTORATION, OR BOTH.

5. NOTHING IN THIS SECTION SHALL PRECLUDE PROSECUTION OR ENFORCEMENT ACTION UNDER ANY OTHER LAW, RULE OR REGULATION, INCLUDING BUT NOT LIMITED TO ARTICLE SEVENTY-ONE OF THE ENVIRONMENTAL CONSERVATION LAW OR SECTION 145.20 OF THE PENAL LAW.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law. Effective immediately, the addition, amendment, or repeal of any rule or regulation necessary for the implementation of the provisions of this act is authorized to be made and completed on or before such effective date.