

STATE OF NEW YORK

5477--A

2019-2020 Regular Sessions

IN ASSEMBLY

February 12, 2019

Introduced by M. of A. THIELE, STERN, LiPETRI, ENGLEBRIGHT, LAVINE, D'URSO, MONTESANO, MIKULIN, RAIA, RA, GOTTFRIED, COLTON, ZEBROWSKI, McDONOUGH, SCHMITT, DeSTEFANO -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to the statute of limitations for public water suppliers and wholesale water suppliers to commence an action for injury to property

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

Section 1. The civil practice law and rules is amended by adding a new section 214-h to read as follows:

§ 214-h. Action to recover damages for injury to property by public water supplier. 1. In this section:

(a) "Contaminant" means any physical, chemical, microbiological or radiological substance or matter in water and includes but is not limited to an emerging contaminant listed pursuant to section eleven hundred twelve of the public health law.

(b) "Person" means an individual, corporation, public corporation, company, association, partnership, or entity of the state or federal government.

(c) "Public water supplier" means a person that owns, manages or operates a community, noncommunity or nontransient noncommunity water system that provides water to the public for human consumption through pipes or other constructed conveyances, if such system has at least five service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days out of the year.

(d) "Wholesale water supplier" means a person that owns, manages or operates a public water system that treats a source of water supply as necessary to produce finished water and then delivers some or all of that finished water to a public water supplier.

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

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1 (e) "Source of water supply" means any groundwater aquifer or waterc-
2 ourse from which water is taken either periodically or continuously for
3 drinking, culinary or food-processing purposes, or which has been desig-
4 nated for present or future use as a source of water supply for domestic
5 or municipal purposes.

6 (f) "Plant intake" means the works or structures at the head of a
7 conduit through which water is diverted from a source of water supply
8 into the treatment plant by a public water supplier.

9 (g) "Well" means any excavation used for obtaining water by a public
10 water supplier.

11 (h) "Raw water" means water immediately before the first or only point
12 of disinfection or other treatment.

13 2. Notwithstanding the provisions of section two hundred fourteen or
14 two hundred fourteen-c of this article, or any other provision of law to
15 the contrary, an action to recover damages for injury to property owned,
16 managed or operated by a public water supplier or a wholesale water
17 supplier resulting from the presence of a contaminant in a source of
18 water supply shall be commenced within three years of the latest of any
19 of the following:

20 (a) the detection of a contaminant in the raw water of each well or
21 plant intake sampling point in excess of any notification level, action
22 level, maximum contaminant level, or maximum contaminant level goal
23 established by the commissioner of health, the department of health or
24 the United States Environmental Protection Agency for that contaminant;

25 (b) the last wrongful act by any person whose conduct substantially
26 contributed to the presence of a contaminant in a source of water supply
27 or the raw water of each well or plant intake sampling point; or

28 (c) the date the contaminant is last detected in the raw water of each
29 well or plant intake sampling point in excess of any notification level,
30 action level, maximum contaminant level, or maximum contaminant level
31 goal established by the commissioner of health, the department of health
32 or the United States Environmental Protection Agency for that contam-
33 inant.

34 3. This three-year period shall apply to each well and each plant
35 intake for each contaminant separately, and the expiration of the three-
36 year period at one well or plant intake shall not affect the three-year
37 period for another well or plant intake.

38 4. Nothing in this section shall abridge or limit a public water
39 supplier's or a wholesale water supplier's right to bring an action to
40 abate an imminent threat of contamination of any well or plant intake or
41 to recover as damages the costs of such abatement.

42 § 2. This act shall take effect immediately.