

STATE OF NEW YORK

1854

2019-2020 Regular Sessions

IN SENATE

January 16, 2019

Introduced by Sens. HOYLMAN, SEPULVEDA -- read twice and ordered printed, and when printed to be committed 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

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

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appropriate by the department. In addition to facilitating interagency coordination and predictive analysis to protect water quality, such system shall provide state agency information to the public through a website, within reasonable limitations to ensure confidentiality and security.

§ 3. Section 206 of the public health law is amended by adding a new subdivision 31 to read as follows:

31. The commissioner is authorized and directed to promulgate rules and regulations to establish standards for the testing of drinking water from privately owned wells. Such standards shall apply to any water wells subject to subdivision eighteen of this section, as added by chapter three hundred ninety-five of the laws of nineteen hundred ninety-nine. Such testing shall be to determine the quality, safety and existing level of contamination of drinking water from privately owned wells.

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

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

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

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

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

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

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

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

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

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

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

2. Every water test conducted in accordance with this section shall be conducted by a laboratory certified by the department pursuant to section five hundred two of this chapter to test for drinking water constituents and shall include but not be limited to a test for at least the following constituents: bacteria (total coliform); sodium; nitrites; nitrates; iron; manganese; iron plus manganese; pH; all volatile organic compounds for which maximum constituent levels have been established pursuant to public health regulations; and lead.

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

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

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

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

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

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

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

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

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

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

1 (vi) such other information as may be required by the department, in
2 consultation with the department of environmental conservation and
3 appropriate local health organizations established pursuant to article
4 three of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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