STATE OF NEW YORK

3337--C

Cal. No. 305

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. GAUGHRAN, LAVALLE, BROOKS, HARCKHAM, HOYLMAN, KAMINSKY, KAPLAN, METZGER, SERRANO, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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. Certain actions by public water suppliers to recover damages for injury to property. 1. In this section:

(a) "Contaminant" means any physical, chemical, biological 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

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

LBD03302-14-9

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.

(e) "Source of water supply" means any groundwater aquifer or other source from which water is taken either periodically or continuously for drinking, kitchen, cooking or food-processing purposes, or which has been designated for present or future use as a source of water supply for domestic or municipal purposes.

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

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

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

2. Notwithstanding any other law that provides for a shorter limitations period, any civil claim or cause of action brought by a public water supplier or wholesale water supplier against any person to recover damages for injury to property owned, managed or operated by a public water supplier or a wholesale water supplier resulting from the presence of a contaminant in a source of water supply shall be commenced within three years of the latest of any of the following:

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

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

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

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

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

§ 2. This act shall take effect immediately.