

STATE OF NEW YORK

5979

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

Introduced by M. of A. BURDICK -- 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

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

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1 coordination and predictive analysis to protect water quality, such
2 system shall provide state agency information to the public through a
3 website, within reasonable limitations to ensure confidentiality and
4 security.

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

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

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

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

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

29 § 1111. Private well testing. 1. (a) Within ninety days after the
30 effective date of this section, the department shall promulgate regu-
31 lations providing for the testing of drinking water from private wells
32 located on real property subject to this section. The regulations shall
33 provide for the full reimbursement of costs associated with the water
34 testing required under this section or any regulations promulgated ther-
35 eto, as well as the implementation of any treatment deemed necessary by
36 the department to protect human health, from funds appropriated through
37 the department of environmental conservation for clean water infrastruc-
38 ture projects.

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

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

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

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

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

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

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

8 2. Every water test conducted in accordance with this section shall be
9 conducted by a laboratory certified by the department pursuant to
10 section five hundred two of this chapter to test for drinking water
11 contaminants and shall include but not be limited to a test for at least
12 the following contaminants: bacteria (total coliform); sodium; nitrites;
13 nitrates; iron; manganese; iron plus manganese; pH; copper; chloride;
14 all specific organic chemicals for which maximum contaminant levels have
15 been established pursuant to public health regulations; lead; arsenic;
16 barium; fluoride; mercury; methane; radium; radon; gross alpha parti-
17 cles; uranium; perfluorononanoic acid (PFNA); perfluorohexanesulfonic
18 acid (PFHxS); perfluoroheptanoic acid (PFHpA); perfluorobutanesulfonic
19 acid (PFBS); hexafluoropropylene oxide dimer acid (HFPO-DA); N-ethyl
20 perfluorooctanesulfonamidoacetic acid (NEtFOSAA); N-methyl
21 perfluorooctanesulfonamidoacetic acid (NMeFOSAA); perfluorodecanoic acid
22 (PFDA); perfluorododecanoic acid (PFDoA); perfluorohexanoic acid
23 (PFHxA); perfluorotetradecanoic acid (PFTA); perfluorotridecanoic acid
24 (PFTrDA); perfluoroundecanoic acid (PFUnA); 11-chloroeicosafluoro-3-oxa-
25 aundecane-1-sulfonic acid (11Cl-PF3OUdS); 9-chlorohexadecafluoro-3-oxa-
26 nonane-1-sulfonic acid (9Cl-PF3ONS); 4,8-dioxa-3H-perfluorononanoic acid
27 (ADONA); nonafluoro-3,6-dioxaheptanoic acid (NFDHA); perfluorobutanoic
28 acid (PFBA); 1H, 1H, 2H, 2H-perfluorodecane sulfonic acid (8:2FTS);
29 perfluoro(2-ethoxyethane)sulfonic acid (PFEEESA); perfluoroheptanesulfon-
30 ic acid (PFHpS); 1H,1H, 2H, 2H-perfluorohexane sulfonic acid (4:2FTS);
31 perfluoro-3-methoxypropanoic acid (PFMPA); perfluoro-4-methoxybutanoic
32 acid (PFMBA); 1H,1H, 2H, 2H-perfluorooctane sulfonic acid (6:2FTS);
33 perfluoropentanoic acid (PFPeA); and perfluoropentanesulfonic acid
34 (PFPeS).

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

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

54 4. (a) Any water test results provided by a laboratory to the person
55 or persons requesting the test shall include the maximum contaminant
56 levels or other established water quality standards, if any, prescribed

1 by the department for each contaminant tested and shall be transmitted
2 on a standardized private well water test reporting form prescribed by
3 the department. The form shall also include, but not be limited to, the
4 potential health effects of exposure to the contaminants, the contact
5 information of the relevant local health organizations established
6 pursuant to article three of this chapter, the contact information of
7 the appropriate office or person within the department or the depart-
8 ment's website regarding appropriate treatment technologies, and avail-
9 able funding to assist with the installation of treatment technology.

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

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

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

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

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

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

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

28 (c) The department shall require laboratories to submit electronically
29 the information required pursuant to paragraph (b) of this subdivision.

30 (d) A laboratory shall not release water test results to any person
31 except the buyer or seller of the real property at issue as provided in
32 subdivision one of this section, the lessor or lessees of the real prop-
33 erty as provided in subdivision six of this section, any person author-
34 ized by the buyer, seller, or lessor, as the case may be, the depart-
35 ment, or any person designated by court order.

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

41 (f) The results of water well tests shall be provided to the depart-
42 ment of environmental conservation for inclusion in the statewide
43 groundwater remediation strategy developed in accordance with section
44 15-3109 of the environmental conservation law and the geographic infor-
45 mation system developed in accordance with section 3-0315 of the envi-
46 ronmental conservation law.

47 5. The department, within ten business days after receiving any report
48 of a water test failure in accordance with this section, shall provide
49 notice of such water test failure to the appropriate local health organ-
50 izations established pursuant to article three of this chapter. Within
51 ten business days of being notified by the department of a water test
52 failure, the appropriate local health organizations established pursuant
53 to article three of this chapter shall issue a general notice to owners
54 of real property served by private wells and any public water systems
55 located in the vicinity of the real property experiencing the water test
56 failure recommending that those property owners or water systems test

1 for at least the contaminants at issue. The specific address or location
2 of the private well that failed a water test shall not be identified in
3 the notice or by any other means or in any other manner. The department
4 shall establish criteria for notification which may include, but shall
5 not be limited to, the maximum contaminant level, the level of excee-
6 dance reported, and the distance or location of the properties or public
7 water supply in the vicinity of the contaminated well for which testing
8 is recommended.

9 6. Within two years after the effective date of this section, and at
10 least once every five years thereafter, the lessor of any real property
11 the potable water supply for which is a private well shall test that
12 water supply in the manner established pursuant to this section for at
13 least the contaminant required pursuant to subdivisions two and three of
14 this section. Within ten business days after the receipt of the private
15 well water testing reporting form established pursuant to subdivision
16 four of this section, the lessor shall also provide a written copy of
17 the private well water testing reporting form to each lessee of a rental
18 unit on the property. The lessor shall also provide a written copy of
19 the most recent private well water testing reporting form to a prospec-
20 tive tenant prior to the signing of a lease of a rental unit on the
21 property.

22 7. (a) The department, in consultation with the department of environ-
23 mental conservation, and local health organizations established pursuant
24 to article three of this chapter shall establish a public information
25 and education program to inform the public and appropriate professional
26 disciplines of the enactment of this section and the substance of its
27 provisions and requirements, the potential health effects of consuming
28 water from a private well that does not meet maximum contaminant levels
29 and other established water quality standards, the potential presence of
30 radium in at least some potable groundwater supplies in the state, the
31 geographic areas in the state subject to an actual or potential threat
32 of danger from contaminated groundwater, the importance of testing
33 private wells regularly for contaminants, and suggested water treatment
34 technology, equipment strategies and public funding sources available
35 for treating water from private wells that have failed a water test
36 conducted in accordance with this section.

37 (b) Within one year of the effective date of this section, the depart-
38 ment shall make available to the public on the department's website a
39 general compilation of water test results for all contaminants identi-
40 fied in subdivision two of this section. The results shall be arranged
41 or identified by county and municipality or appropriate geographic area
42 therein, but which does not include specific address or location infor-
43 mation. The department shall update its website and add new water test
44 results at least annually.

45 8. Within three years of the effective date of this section, the
46 department shall prepare and transmit to the governor and legislature a
47 report on the implementation and operation of this section. Such report
48 shall also describe the benefits and deficiencies realized as a result
49 of this section and include recommendations for any appropriate legisla-
50 tive action. The report shall also be made available to the public and
51 be posted on the department's website.

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

54 § 468. Private well testing requirements. 1. Every contract for the
55 sale of real property, including a multiple family dwelling as defined
56 in section eight hundred two of the executive law, which is served by a

1 private well that is the potable water supply for such property shall
2 include a provision requiring as a condition of sale, the testing of
3 such water supply for at least the standards prescribed pursuant to
4 section eleven hundred eleven of the public health law. Provisions of
5 this section shall not apply to property where the potable water supply
6 has five or more service connections or that regularly serves an average
7 of twenty-five or more individuals daily for at least sixty days out of
8 the year.

9 2. Closing of title on the sale of such real property shall not occur
10 unless both the buyer and the seller have received and reviewed a copy
11 of the private well water testing reporting form established pursuant to
12 subdivision four of section eleven hundred eleven of the public health
13 law. At closing, the buyer and seller both shall certify in writing
14 that they have received and reviewed the water test results.

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

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