

## CHAPTER 40

**AN ACT** concerning the testing of water from private wells, supplementing Title 58 of the Revised Statutes, and making an appropriation.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.58:12A-26 Short title.

1. This act shall be known and may be cited as the "Private Well Testing Act."

C.58:12A-27 Water testing of private well as provision of contract of sale; reviewing water testing results.

2. a. Every contract of sale of (1) real property the potable water supply for which is a private well located on the property, or (2) any other real property the potable water supply for which is a well that has less than 15 service connections or that does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year, shall include a provision requiring, as a condition of the sale, the testing of that water supply for at least the parameters prescribed pursuant to sections 3 and 4 of this act.

- b. Closing of title on the sale of the real property shall not occur unless both the buyer and the seller have received and reviewed a copy of the water test results. At closing, the buyer and seller both shall certify in writing that they have received and reviewed the water test results.

C.58:12A-28 Water test parameters.

3. Every water test conducted in accordance with this act shall include a test for at least the following parameters: bacteria (total coliform); nitrates; iron; manganese; pH; all volatile organic compounds for which maximum contaminant levels have been established pursuant to P.L.1977, c.224 (C.58:12A-1 et seq.); and lead.

In addition, the water test shall include a short term 48-hour gross alpha test to screen for the presence of radium, provided that the Department of Environmental Protection has made a finding pursuant to subsection b. of section 4 of this act that there are a sufficient number of laboratories certified to perform the test.

C.58:12A-29 Rules, regulations; additional parameters.

4. a. The Department of Environmental Protection, in consultation with the Drinking Water Quality Institute, established pursuant to section 10 of P.L.1983, c.443 (C.58:12A-20), shall develop, by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a list of additional parameters which the department deems significant in each county or in any specific area within a county and which shall be tested for as part of any water test to be conducted in accordance with this act. These additional parameters may include, but need not be limited to, arsenic and mercury.

- b. (1) The Department of Environmental Protection shall conduct an annual review to determine if there are a sufficient number of laboratories certified to perform the short term 48-hour gross alpha test to screen for the presence of radium that are able to provide results at a reasonable cost within 10 days of a request for testing. This review shall be based upon the projected number of transactions for which the test is required. The department shall publish its findings in the New Jersey Register.

For the purposes of section 3 of this act, if the department finds that there are a sufficient number of laboratories to conduct the short term 48-hour gross alpha test to screen for the presence of radium only within a limited area in the State, as determined by the department, and which laboratories are able to provide results at a reasonable cost within 10 days of a request for testing, then the test shall be required only within that limited area until such time as the department finds that there are a sufficient number of laboratories to provide service elsewhere in the State.

- (2) The department shall establish, by rule or regulation adopted pursuant to the "Administrative Procedure Act," a protocol for proper conducting of the short term 48-hour gross alpha test to screen for the presence of radium.

- c. The Department of Environmental Protection, in consultation with the Drinking Water Quality Institute and by rule or regulation adopted pursuant to the "Administrative Procedure Act," may exclude or limit by geographic area or geologic formation, or based upon well record

information, any parameter listed in section 3 of this act that the department deems is not significant in a county or in any specific area within a county and which need not be tested for as part of any water test to be conducted in accordance with this act.

d. For each parameter to be tested for in accordance with this act, the Department of Environmental Protection shall establish, by rule or regulation adopted pursuant to the "Administrative Procedure Act," a maximum time period for which a test result shall remain valid for the purposes of section 2 of this act without necessitating retesting for that parameter. A retest of the water supply shall not be required pursuant to section 2 of this act if the contract of sale is entered into within the period of test validity established pursuant to this subsection. Notwithstanding any provision of this subsection to the contrary, a buyer and seller subject to the provisions of section 2 of this act may mutually agree to retest for a parameter even though the maximum time period for test validity for that parameter established pursuant to this subsection has not expired.

C.58:12A-30 Water testing by laboratories; conditions.

5. a. Any water test conducted in accordance with this act shall be conducted by a laboratory certified by the Department of Environmental Protection pursuant to subsection c. of section 4 of P.L.1977, c.224 (C.58:12A-4) to test for drinking water contaminants.

b. Any water test results provided by a laboratory to the person or persons requesting the test shall include the maximum contaminant levels or other established water quality standards, if any, prescribed by the Department of Environmental Protection for each parameter tested and shall be transmitted on a standardized private well water test reporting form prescribed by the department. The form shall provide information regarding remediation funding alternatives available, and shall refer the buyer and seller of the real property in question to the appropriate office or person within the Department of Environmental Protection, or to the department's website, for further information regarding such alternatives.

c. The laboratory, within five business days after completion of the water test, shall also submit the water test results to the Department of Environmental Protection together with the following information:

(1) A statement that the testing is for the purpose of complying with the "Private Well Testing Act," P.L.2001, c.40 (C.58:12A-26 et seq.);

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

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

(4) The name of the employee or authorized representative of the laboratory who collected the well sample;

(5) The date and time that the water sample was collected and the specific point of collection;

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

(7) Such other information as may be required by the Department of Environmental Protection, in consultation, if deemed necessary or appropriate by the department, with each county health department, health agency, or designated health officer, as appropriate to each county.

d. The Department of Environmental Protection may require laboratories to submit electronically the information required pursuant to subsection c. of this section.

e. A laboratory shall not release water test results to any person except the buyer and seller of the real property at issue as provided pursuant to section 2 of this act, the lessor of the real property as provided pursuant to section 7 of this act, any person authorized by the buyer, seller, or lessor, as the case may be, the Department of Environmental Protection, or any person designated by court order.

f. The Department of Environmental Protection shall compile the data accumulated from the water test results submitted by laboratories pursuant to this section in a manner that shall be useful to the department, counties, municipalities, or other governmental entities for the purposes of studying groundwater supplies or contamination in the State.

C.58:12A-31 Actions on water testing results; information for public record.

6. a. The Department of Environmental Protection, within five business days after receiving any report of a water test failure in accordance with this act, shall provide notice thereof to the county health department, health agency, or designated health officer, as appropriate to each county in which the private well that failed the water test is located. The county health department, health agency, or designated health officer, as appropriate to each county, may issue a general notice to owners of real property served by private wells located in the vicinity of the real property experiencing the water test failure suggesting or recommending that those property owners may wish to have their private wells tested for at least the parameters at issue. The specific address or location of the private well that failed a water test shall not be identified in the notice or by any other means or in any other manner. The department shall establish criteria for notification which may include, but shall not be limited to, the level of exceedance recommended for notification, and the distance or location of the properties in the vicinity of the contaminated well for which testing is recommended. It shall be at the sole discretion of the county health department, health agency, or designated health officer, as appropriate to each county, whether or not to issue such a notice and to whom and by what means it shall be given.

b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other law to the contrary, water test results received by the Department of Environmental Protection, a county health department, health agency, or designated health officer, or any other State or local governmental entity in compliance with or as authorized by this act shall be confidential and shall not be open for public examination, inspection, or copying, except that general compilations of water test results data arranged or identified by county and municipality or appropriate geographic areas therein, which do not include specific address or location information, may be made available to the public.

C.58:12A-32 Lessor's water testing responsibilities for private wells.

7. Within 18 months after the effective date of this section, and at least once every five years thereafter, the lessor of any real property the potable water supply for which is a private well for which testing of the water is not required pursuant to any other State law, shall test that water supply in the manner established pursuant to this act for at least the parameters required pursuant to sections 3 and 4 of this act. Within 30 days after receipt of the test results, the lessor shall provide a written copy thereof to each rental unit on the property. The lessor shall also provide a written copy of the most recent test results to a new lessee of a rental unit on the property.

C.58:12A-33 Public information, education program, established.

8. The Department of Environmental Protection, in consultation with county health departments, health agencies, and designated health officers, shall establish a public information and education program to inform the public and appropriate professional disciplines of the enactment of this act and the substance of its provisions and requirements, the potential health effects of consuming water from a private well that does not meet maximum contaminant levels and other established water quality standards, the potential presence of radium in at least some potable groundwater supplies in the State, the geographic areas in the State subject to an actual or potential threat of danger from contaminated groundwater, the importance of testing private wells regularly for contaminants, and suggested water treatment techniques, equipment, strategies and public funding sources available for treating water from private wells that have failed a water test conducted in accordance with this act.

The department shall make available to the public a general compilation of water test results data arranged or identified by county and municipality or appropriate geographic areas therein, but which does not include specific address or location information.

C.58:12A-34 Local health authority not preempted.

9. Nothing in this act shall be construed to limit or preempt the authority of a county, county health department, health agency, or designated health officer from making or causing to be made such inspection and testing of a water supply as may be necessary to ensure the health and safety of the residents of the State.

C.58:12A-35 Report to Legislature, Governor.

10. Within five years after the date of enactment of this act, the Department of Environmental Protection, in consultation with county health departments, health agencies, and designated health officers, shall prepare, and transmit to the Governor and Legislature, a report on the implementation and operation of this act, which report shall also describe the benefits and deficiencies realized as a result of the act and include recommendations for any appropriate legislative action. This report shall also be made available free of charge to the public.

C.58:12A-36 Staffing for DEP.

11. The Department of Environmental Protection shall hire, pursuant to Title 11A (Civil Service) of the New Jersey Statutes, a sufficient number of new employees as may be deemed necessary by the department to implement this act.

C.58:12A-37 Annual budget request by DEP for implementation and staffing.

12. a. Notwithstanding any provision of section 11 of P.L.1983, c.443 (C.58:12A-21) or any other law to the contrary, there is appropriated from the "Safe Drinking Water Fund," established pursuant to section 11 of P.L.1983, c.443 (C.58:12A-21), to the Department of Environmental Protection the sum of \$1,000,000 to pay the initial costs of (1) implementing this act, including but not limited to the costs of hiring any new employees needed to implement this act and of establishing and administering the data base required by this act, and (2) providing grants to county health departments, health agencies, and designated health officers to pay for any costs incurred by those entities resulting from implementation of this act.

b. For each State fiscal year after the State fiscal year in which this act is enacted, the Commissioner of Environmental Protection shall include in the annual budget request of the Department of Environmental Protection submitted for the annual appropriations act a sufficient sum to meet the costs, as set forth in subsection a. of this section and in section 11 of this act, for the particular State fiscal year.

13. This act shall take effect immediately except that sections 2 and 7 shall take effect on the 540th day following the date of enactment of this act.

Approved March 23, 2001.