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ENVIRONMENTAL PROTECTION

DIVISION OF WATER SUPPLY

Private Well Testing Act Rules

Readoption with amendments: N.J.A.C. 7:9E

Proposed: October 1, 2007 at 39 N.J.R. 4021(a)

Adopted: March , 2008 by Lisa P. Jackson, Commissioner
Department of Environmental Protection

Filed: March , 2008 as R. d. without change.

Authority: N.J.S.A. 58:12A-26 et seq.

DEP Docket Number: 18-07-08/654

Effective Date: , 2008

Expiration Date:

The Department of Environmental Protection (Department) is readopting the Private Well Testing Act (PWTA) rules at N.J.A.C. 7:9E with amendments. The adopted amendments expand arsenic sampling requirements to two additional counties (Warren and Sussex) in the list of counties in which sampling for this contaminant is required.

Summary of Public Comment and Agency Response:

The Department received one written comment on the proposal from Robert Gogats, Public Health Coordinator, County of Burlington, which is summarized below and followed by the Department's response.

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1. COMMENT: The Private Well Testing Act (PWTA) is an unfunded State mandate.

The PWTA and the implementing rules are not without significant costs to those affected by them and to the local taxpayers that support local and county health departments. The commenter asks what the Department intends to do to secure and distribute funds, which would make the Private Well Testing Act a funded State mandate.

RESPONSE: The PWTA and associated rules do not constitute an unfunded mandate because they do not impose mandatory obligations on a local government entity, but instead authorize discretionary action on the part of local health authorities. The local health authorities determine what activities, if any, to undertake in response to information received regarding well tests.

The PWTA at N.J.S.A. 58:12A-31 states that "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 experiencing water test failure suggesting or recommending that those property owners may wish to have their private well tested for at least the parameters at issue...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." The Department recognizes that many local health authorities have exercised their discretion and issued that notice and the Department supports such efforts.

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The PWTA at N.J.S.A. 58:12A-37 appropriated \$1 million from the Safe Drinking Water Fund established under the Safe Drinking Water Act (see N.J.S.A. 58:12A-21), to pay the initial costs of implementing the PWTA, including Department program and database costs as well as assistance to local health authorities. The Department did provide funding from that appropriation to county health agencies involved in PWTA activities to assist with the initial costs of implementing the program, including computers to receive PWTA notifications and data. The PWTA also provides that the Department annually request appropriations to cover the costs of implementing the program; however, at this time there is no dedicated source of funding for the Department or for local health authorities for the PWTA program.

The Department notes that it supports a variety of county health agency efforts through the County Environmental Health Act (CEHA) funding. Some of this funding may be used to conduct follow up investigations for groundwater contamination that may have been identified as a result of sampling conducted pursuant to the PWTA.

Federal Standards Statement

Executive Order 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State administrative agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The Private Well Testing Act applies to buyers, sellers and lessors of certain real property. The Act requires that all contracts of sale for any real property the potable

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water supply for which is a private well located on the property, or for any other real property whose potable water comes from 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, include a provision requiring, as a condition of the sale, the testing of that water supply for certain parameters. In addition, the Act requires 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, test that water supply for certain parameters at least once every five years and, within 30 days after receipt of the test results, provide a written copy of the results to each rental unit and each new lessee. The Department is readopting the PWTA rules to continue to require this testing and to amend the rules to increase the number of counties in which arsenic testing is required. There is no comparable Federal law regarding the testing of the drinking water quality supplied by the wells subject to the Act.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 7:9E.

Full text of the adopted amendments follows:

(No change from proposal.)