

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

**ENVIRONMENTAL PROTECTION  
DIVISION OF WATER SUPPLY**

**Private Well Testing Act Rules**

**Proposed Readoption:** N.J.A.C. 7:9E  
**Proposed Amendment:** N.J.A.C. 7:9E-2.1(c)  
**Authorized by:** Lisa P. Jackson, Commissioner  
Department of Environmental Protection

Authority: N.J.S.A. 58:12A-26 et seq.  
Calendar Reference: See Summary below for explanation of the exception to the calendar requirement.

DEP Docket Number: 18-07-08/654  
Proposal Number: PRN 2007-

Submit written comments by **November 30, 2007** to:

Oneida Cuevas, Esq.  
Attention: DEP Docket Number: 18-07-08/654  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
P.O. Box 402  
Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's web site at <http://www.state.nj.us.dep>.

The agency proposal follows.

**Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing to readopt the Private Well Testing Act (PWTA) rules at N.J.A.C. 7:9E with amendments. In accordance with the "sunset" provisions of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Private Well Testing Act rules at N.J.A.C. 7:9E were due to expire on September 16, 2007. The expiration date has been extended by 180 days to March 14, 2008 pursuant to N.J.S.A. 52:14B-5.1c.

The Private Well Testing Act Rules were adopted effective September 16, 2002, to implement the Private Well Testing Act, N.J.S.A. 58:12A-26 et seq. The Act, which became effective on September 14, 2002, applies to buyers, sellers and lessors of certain real property. The Act establishes the requirements for the sampling of individual private wells to ensure that purchasers and lessees of properties served by private potable wells are made aware of the quality of the untreated drinking water sources prior to sale or lease.

Specifically, the Act requires that all contracts of sale for any real property, for which the potable water supply 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 PWTA rules implement these requirements.

The PWTA rules at N.J.A.C. 7:9E establish a list of parameters for which the well water must be tested, a procedure for the submittal and confidential treatment of the test results and related information and a procedure for providing notice to applicable local health agencies. The Department's Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18 establish specific laboratory certification and analytical requirements in accordance with the Act.

The Department is proposing to readopt the PWTA rules with an amendment at N.J.A.C. 7:9E-2.1 that expands arsenic sampling requirements to two additional counties (Warren and Sussex) in the list of counties in which sampling for this contaminant is required.

The following is a summary of the rules proposed for readoption and amendment.

Subchapter 1, General Provisions, establishes the general provisions of the chapter, including scope, authority, definitions and severability.

Subchapter 2, Sampling and Testing Requirements, sets forth the list of parameters and the counties in which testing is required. In addition, it sets forth the requirement that all samples be analyzed by a laboratory certified in accordance with N.J.A.C. 7:18, the Regulations Governing the Certification of Laboratories and Environmental

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

Measurements, and requires that water samples be collected in accordance with those rules. Subchapter 2 further establishes the appropriate location for collecting the sample.

At N.J.A.C. 7:9-2.1(c), the Department is proposing to add Sussex and Warren Counties to the list of counties in which sampling for arsenic must be conducted under the PWTA rules. Currently, arsenic testing is required only in those 10 counties located at least partially in the Piedmont area of the State. Some of these 10 counties lie partly in the Piedmont and partly in the Highlands physiographic province. Following its review of sampling results submitted over the past two years under the PWTA rules, the Department has determined that arsenic levels above the current maximum contaminant level (MCL) of five µg/l are likely to occur in the Highlands, as well as in the Piedmont. The Department therefore proposes to expand arsenic testing to the two remaining northern counties, Sussex and Warren, that are part of the Highlands physiographic province. The Department is proposing the amendment to ensure that wells in both the Piedmont and the Highlands areas of the State are sufficiently monitored for arsenic. No other changes are proposed for Subchapter 2.

Subchapter 3, Reporting and Data Validity, sets forth the reporting requirements for certified laboratories. In accordance with the Act, the rules require the certified laboratories to submit the results and required information to the Department within five business days of completion of analysis. The Department accepts only electronic submissions of the required data. In addition, the rules establish the length of time for which the data submitted in accordance with this chapter remains valid for purposes of the sale of real property.

Subchapter 4, Notification Process, establishes the process by which notification would be made to the Department, appropriate health authorities and to the public in the event of well test failures. The Act provides that notification to the public is at the discretion of the appropriate health authorities.

Subchapter 5, Confidentiality of Information Submitted Pursuant to this Chapter, governs the confidential treatment of all information submitted pursuant to the chapter.

### **Social Impact**

The Department anticipates that the rules proposed for readoption with amendment will continue to have a positive social impact as they are an essential part of the Department's efforts to protect public health and the environment and will help ensure the quality of drinking water delivered to consumers. As a result of the PWTA, buyers and sellers of real property whose potable water source is a well that is subject to the Act obtain information regarding the quality of the well water and how the well water quality compares to the State and Federal standards for the parameters required to be tested for under the PWTA rules. Both parties are then in a position to make informed decisions as to the potability of the well water and the issues, financial and otherwise, which may be

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

involved in those situations where the well tests indicate a problem. As noted in the Economic Impact below, financial assistance programs for the purpose of the remediation of private wells are available to both parties. Similarly, landlords of real property where the source of potable water is a well that is subject to the Act are required to test the drinking water being supplied to the tenant and to advise the tenant accordingly.

There are a number of additional public health benefits that specifically result from the implementation of the rules. The Department informs appropriate health authorities of all results in their jurisdiction. As individual well test failures become known, health authorities are able to determine if the reported problem is unique to that system/property or if there is a more extensive water quality problem that needs to be investigated further. Health authorities may choose to notify neighboring property owners of the water quality problem and recommend additional testing. If neighboring homeowners do choose to test their own drinking water, then those water test results could also help the health authorities determine whether the original well test failure is indicative of a larger problem or most likely unique to that original well system.

In addition, the Department analyzes water test results to study water quality trends in certain aquifers, and to aid in the discovery and movement of contaminant plumes. The data allows the Department to draw comparisons to determine if the same threats to health exist between public versus nonpublic drinking water systems. The expansion of the arsenic testing requirements to Sussex and Warren counties will provide additional data to support these assessment efforts. The information is useful to other activities already under way in the Department such as the identification of areas within the State which are more vulnerable to contamination by land use activities, estimating the impact of private well use during drought periods, and refining wellhead delineation techniques.

### **Economic Impact**

The Department anticipates that the rules proposed for readoption with amendment will continue to have a positive economic impact. Although the rules apply to other buildings in addition to homes, including some public water systems currently regulated under the Department's safe drinking water regulations, the Department anticipates that most of the well testing performed under these rules will continue to result from home sales which use a private well as a source of potable water. Due to fluctuations in demographic trends and the real estate market, it is not possible to accurately determine the number of homes sold each year that are supplied by private wells. However, an average of 13,000 PWTA data submittals are received by the Department each year. The Department estimates the cost of compliance with the Act and these rules to be an average of \$450.00 to \$650.00 per drinking water system, with the higher cost for those wells that must be sampled for all parameters including gross alpha particle activity.

Water testing may be arranged and paid for by either the buyer or seller. While there is no requirement under the rules proposed for readoption with amendment to

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

remediate private water systems which exceed recommended standards, the Department expects that additional testing and remediation may be indirect economic impacts of a well test failure. Additional expenses may be incurred, in most cases by the seller, to obtain additional testing to verify contamination and treat the water in order to bring water quality up to safe drinking water standards.

The rules proposed for readoption with amendment similarly affect landlords who lease real property whose potable water supply is a private well. As set forth in the summary above, the Act requires that the lessor of any real property, for which the potable water supply is a private well, and for which testing of the water is not required pursuant to any other State law, test that water supply for certain parameters at least every five years, and provide a written copy of the results within 30 days after receipt to each rental unit and each new lessee. While there is no requirement under the rules for the landlord to remedy any conditions that have caused a well test failure, or to expend any funds for remediation of the water quality, it is possible that once the tenant is given a copy of the well test results, the landlord may find it necessary to remedy any conditions which have resulted in a well test failure.

Currently, there are two State programs which assist private well owners with the remediation of potable wells: the Spill Compensation Fund ("Spill Fund"), which is administered by the Department of Environmental Protection, and the Potable Water Loan Program, which is administered by the NJ Housing and Mortgage Finance Agency (NJHMFA). The Spill Fund can provide immediate assistance to owners whose well water has been affected by contamination of hazardous substances from man-made sources. The NJHMFA loan program offers 10-year, no-interest loans up to \$10,000 to homeowners whose well test fails to meet the primary drinking water standards and some of the secondary drinking water standards. Currently, under the NJHMFA program only owners of single family residences may apply for a loan. In addition, the NJHMFA program also requires that the applicant secure the loan as a second mortgage.

A continued economic impact of the rules proposed for readoption with amendment will be felt by the local health authorities charged with overseeing the public health and safety of residents within their jurisdiction. Although the rules do not require local health authorities to oversee remedial action for failed well tests, nor do the rules mandate health authorities to provide public notification to surrounding property owners, local health authorities are required under New Jersey safe drinking water regulations to take action when well water does not meet drinking water standards. As a result, local health authorities have become involved in overseeing well treatment and in investigating well contamination within their jurisdiction. The Department expects that failed well tests will likely continue to affect the workload for the local health authorities in this manner. Initial cumulative Statewide PWTA cost estimates to the local health authorities were anticipated to be near \$3.1 million per year in 2002. Based on an assessment of the number of results submitted under the PWTA by the Department over the course of its implementation, the Department now estimates the cost at approximately \$1.5 million per year. Local health authorities in Sussex and Warren Counties may become involved in overseeing well

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

treatment and investigating well contamination for additional well test failures resulting from arsenic testing. The Department expects that a small number of additional wells (approximately 30) will result in failed well tests for arsenic in Sussex and Warren Counties.

Some buyers, sellers, lessors, and tenants affected by the proposed amendment to impose well testing for arsenic in Sussex and Warren Counties will incur additional expenses. Laboratories typically charge between \$25.00 and \$35.00 to conduct an arsenic analysis. The Department anticipates, however, that some laboratories that do business in these two counties will increase their rates only marginally, or analyze for arsenic as part of the analysis for a suite of contaminants at no additional charge.

The cost of installing arsenic treatment at private wells is significant. As explained in the Economic Impact of the Department's 2004 proposal of the arsenic MCL (see 36 N.J.R. 304), the initial cost of installing arsenic treatment for domestic wells, using granular ferric oxide point-of-entry devices, ranges from \$2,000 to \$3,600. The cost of replacing the media currently ranges from \$600.00 to \$850.00 per household. The media will last from two to three years depending on the concentration of arsenic in the raw (untreated) water. Point-of-use devices cost an estimated \$235.00 to \$450.00, with a yearly cartridge replacement cost of \$60.00 to \$165.00.

The proposed amendment may have a positive impact on laboratories certified by the Department because they could be called upon to analyze the additional parameter that the proposed amendment will require in Sussex and Warren Counties. However, it is expected that this impact would be minimal due to the low cost of arsenic testing and the low number of wells expected to be affected.

### **Environmental Impact**

The Department anticipates that the rules proposed for readoption with amendment will continue to have a beneficial environmental impact. Many of the sample results submitted in accordance with this program will continue to be collected from private wells systems which have not previously been analyzed for all, if any, of the required parameters. The Department expects that this data will continue to be useful for evaluating the impact of contamination from a variety of sources on groundwater sources used for drinking water. Contaminant plumes that may be discovered as a result of failed well tests may prompt remedial investigations and eventual cleanup. The installation of domestic treatment devices to remove unwanted contaminants could also result in a number of environmental impacts of their own. In some cases, the treatment will result in the removal of the contaminant. In other situations, such as when home treatment units with granular activated carbon are installed to remove organic contaminants, naturally occurring radiological contamination may also accumulate in the treatment device. As a result, the device itself may become a radiation emitter that could pose an additional health risk to the

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

residents of the building. However, the Department believes the overall risk to the consumer is lessened by the installation of treatment.

Water test results submitted to the Department are compiled and provided to the public via the Department's website. This information also may be used by local and State agencies for planning purposes, for identifying the need for groundwater investigations and cleanups, and for identifying optimal conditions for drilling new wells.

The proposed amendment that adds arsenic to the testing parameters for Sussex and Warren Counties could result in the installation of domestic treatment units, which could have a number of environmental impacts. In some cases, the treatment will result in the removal of the contaminant from the environment. In other situations, such as when home treatment units release contaminants from the treatment device back into the environment as part of the maintenance process, it may amount to a redistribution throughout, rather than removal of, the contaminant from the environment. However, as noted above, the Department believes that the overall risk to the consumer is lessened by the installation of treatment and environmental risk can be reduced through other measures, such as alternate disposal. Such measures are evaluated during treatment design and selection.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require that 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.

As explained in the summary, 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 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 proposing to readopt 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.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

### **Jobs Impact**

The rules proposed for re adoption and amendment will continue to have a positive economic impact on businesses involved in water sampling and testing, such as laboratories certified by the state of New Jersey for drinking water methods. Other small businesses which may continue to derive some economic benefit from the rules are New Jersey certified well drillers and pump installers, environmental consultants, and sellers of water treatment equipment. The positive impact upon these businesses may continue to result in increased employment opportunities. Only a marginal increase in analytical work and treatment as a result of the expanded area for arsenic testing in Sussex and Warren counties is expected as the number of wells requiring treatment is expected to be small. Thus any increase in jobs in these areas is expected to be small.

### **Agricultural Industry Impact**

The sale or lease of homes or other structures located on agricultural lands is subject to the rules proposed for re adoption with amendment in the same way as the sale or rental of any real property in the State where the potable water supply is a private well or a nonpublic water system.

The PWTA rules require 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, to test that water supply for certain parameters and, within 30 days of receipt of the test results, to provide a written copy of the results to each rental unit and each new lessee. Consequently, the testing requirements may continue to have an impact on some farmers or owners who rent out camps directly or indirectly to migrant farm workers. In addition, the amendment may affect some farmers or owners who rent out camps directly or indirectly to migrant farm workers in Sussex and Warren counties that now will be required to test for arsenic.

### **Regulatory Flexibility Analysis**

It is anticipated that the rules proposed for re adoption with amendment will continue to have an effect upon "small businesses" as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The impact on small businesses that own or lease properties supplied by potable wells subject to testing under the Act will be the same as it is upon homeowners. At the time the properties are sold or leased, they will be subject to the same testing requirements and potential expenditures for treatment. The Act itself requires the landlord or owner to maintain a copy of the latest water test results and to provide a written copy to the tenant. The Department's role, however, is limited to specifying the list of required parameters, sampling procedures, data reporting



NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

and notification protocol. In cases of failed well tests, owners of small businesses and rental properties would have the same potential liabilities and expenditures for remediation as discussed in the Economic Impact above.

The continued implementation of these rules proposed for re-adoption will also have an impact upon any laboratories certified by the State of New Jersey that choose to do PWTA analysis. Some of these laboratories come within the definition of small businesses. It will be necessary for laboratories not already submitting data under the PWTA to implement means to provide data electronically to the Department for the PWTA. The costs associated with implementing a system will be based on several factors. Those factors include the nature of the existing data system and whether that system is compatible with the system used by the Department to accept electronic data, whether existing laboratory staff are adequate to complete electronic data entry, and whether those staff will require formal training to conduct such data entry. However, the Department expects that most laboratories that will elect to submit PWTA data have already implemented requirements, and thus the impact under the continued implementation of these rules is expected to be small.

The rules proposed for re-adoption with amendment will continue the positive impact on certified laboratories by continuing the demand for the services of such laboratories.

### **Smart Growth Impact**

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the impact of the rules proposed for re-adoption with amendment on smart growth and the implementation of the State Plan. Most of the real properties subject to the Act and the rules are expected, by their nature, to be located in rural or less developed areas of the State. Therefore, the impact to the redevelopment of urban and suburban areas is expected to be minimal.

The information gathered as a result of these rules will continue to provide an indirect benefit. The Department will continue to review and evaluate the data submitted under the PWTA program and use the information to evaluate the safety of the water being consumed, to evaluate the occurrence of the regulated contaminants in private wells, and to determine the presence of contaminant plumes in aquifers used as potable sources. Therefore, the rules proposed for re-adoption with amendment will help the Department, local health authorities and private citizens obtain more information about drinking water quality supplied to individual homes as well as larger geographic areas. This will help to better conserve and protect this natural resource. Conservation of the State's natural resources is one of the overall goals of the State Plan.

NOTE: THIS IS A COURTESY COPY OF THIS RULE PROPOSAL. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE OCTOBER 1, 2007 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE PROPOSAL, THE OFFICIAL VERSION WILL GOVERN.

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

**Full text** of the proposed amendments follows (additions indicated on boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 2. SAMPLING AND TESTING REQUIREMENTS

### 7:9E-2.1 Parameters for which testing is required

- (a) – (b) (No change.)
  - (c) In addition to the parameters listed at (a) above, water samples collected from Bergen, Essex, Hudson Hunterdon, Mercer, Middlesex, Morris, Passaic, Somerset, [and] **Sussex, Union, and Warren** county locations shall be analyzed for arsenic.
  - (d) (No change.)
-