

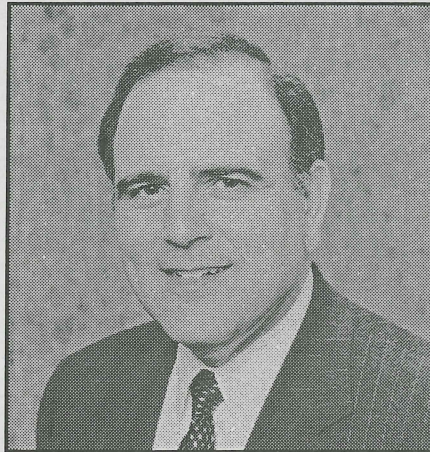
THE NEW PRIVATE WELL TESTING ACT

By Thomas J. Denitzio, Jr. and Rosemary Culcasi

On March 23, 2001, the Private Well Testing Act (the "Act") was signed into law in New Jersey. The Act provides that, effective September 14, 2002, every contract for the sale of real estate must provide for testing of private and some public drinking wells for certain contaminants in the water supply. The Act also provides that a closing shall not occur until both the buyer and seller certify in writing that they have received and reviewed a copy of the water test results. Certain rental properties using private wells are also subject to the Act.

Wells Subject To The Act

The Act covers the following: (a) sale of real property where the potable water supply is a private well located on that property; (b) sale of real property where the potable water supply is a well that has fewer than 15 service connections or that does not regularly serve an average of at least 25 people daily at least 60 days out of each year; and (c) rental of real property where the source of its drinking water is from a well that is not



required to be tested under any other State law.

When The Test Is Conducted

Contracts for the sale of real estate usually contain certain contingencies for the inspection of the property. The well water test should be included in the contract as such a contingency. Unlike other contingencies, the Act does not allow parties to waive the requirement of well testing. For rental properties, landlords are required to complete the testing by March 14, 2004 and thereafter at least once every five years, whether or not the rental property is being sold. The landlord must provide a copy of the new test results to each tenant within thirty (30) days of receiving those results. The landlord must also provide each new tenant with a written copy of the most recent test results.

The Test

The Act does not stipulate whether the seller or buyer should pay for the test. The cost is estimated to be in the range of \$450.00 to \$600.00.

Well water samples must come from untreated water and must be collected by an employee of a certified laboratory or by a laboratory's authorized representative. If a treatment device is on a tap, the device must be disabled before a sample is collected.

The location of the property determines the nature of the test. All wells subject to the Act must be tested for the following:

bacteria (total coliform), nitrates, iron, manganese, pH, lead, and all volatile organic compounds for which the maximum contaminant levels have been established according to State law. The requirement to analyze additional contaminants varies depending upon the county where the property containing the well is located. Wells located in the southern part of the State must be tested for mercury. Wells in the northern part of the State, excluding Sussex and Warren Counties, must be tested for arsenic. In addition, testing for certain gross alpha particle activity, including radium and uranium, will be phased in over the next eighteen (18) months in certain counties.

Test Results

The laboratory is required to report the test results to the person who requested the test and electronically to the New Jersey Department of Environmental Protection (the "DEP") within five (5) days of the test. The test results will be reported on a standard

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Upcoming Events Mark Your Calendars Now!



Saturday, April 19, 2003
"Sesame Street Live!"
State Theatre, New Brunswick



Thursday, April 24th
2nd Annual Beefsteak Dinner
Annual Election of Officers
(See page 7 for details)



Wednesday, May 21, 2003
Annual Installation Dinner Cruise
Cornucopia Princess, Perth Amboy
(See page 9 for details)



Monday, June 2, 2003
Annual Golf Outing
Royce Brook Golf Club
100 Reserved Already - Call Today!
(See page 11 for details)

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form provided by the DEP, which will show how the well water compares with State and Federal drinking water standards. The laboratory will certify whether the results meet or fail to meet primary or secondary contaminant standards required by the Act. A well test failure is defined as any result that fails to meet the specified standards.

The DEP must report all test failures to the county health officials. However, both the DEP and the local health authority are required to keep the address of tested wells confidential. The exact location of the test failure cannot be identified. Health authorities may, but are not required to, notify surrounding homeowners within the vicinity of the failing test result.

In addition, an owner of property on which a contaminated well is detected may have a reporting obligation under the Spill Compensation and Control Act. Terminating the transaction does not relieve the homeowner of the obligation to call the DEP hotline if he or she otherwise has this obligation. Performing a pre-test before entering into a contract of sale, which test would be unrelated to a laboratory's reporting obligations under the Act, also does not relieve the homeowner of this reporting obligation.

Failure to meet one or more of the drinking water standards does not mean that the sale cannot be completed. The Act does not require treatment for well water that fails to meet State or Federal standards, though as referenced above other regulations may. A contract may provide for termination upon receipt of unsatisfactory test results. However, if the buyer chooses to proceed with the transaction, the buyer and seller will have to agree on the necessary steps to remediate any contamination and how the cost will be allocated between them. If a mortgage lender requires a copy of the test results, and if those results are unsatisfactory, the lender may require remediation.

Remediation

Treatment options are specified in the reporting form delivered by the laboratory. Assistance for payment of remediation costs may also be available. A person should review his or her homeowner's insurance policy to determine whether this is a covered claim and whether or not to file a claim. A person may also qualify for a State loan or grant to pay for the cost of remediation.

Conclusion

The Act is aimed at protecting users of well water by mandatory testing on sale or if the property is rented. However, if contamination is found, there is no allocation of the responsibility for remediation, which will have to be resolved on a case-by-case basis.

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