

LOCAL LAW INTRO. NO. - 2006

A Local Law to add a new Chapter 707 of the Laws of Westchester County to require the testing of private well-water systems upon the sale of property and for leased properties within the County of Westchester.

BE IT ENACTED by the County Board of the County of Westchester as follows:

Section 1. A new Chapter 707 of the Laws of Westchester County is hereby added to read as follows:

**CHAPTER 707
PRIVATE WELL-WATER TESTING LAW**

- § 707.01. Definitions.**
- § 707.02. Applicability.**
- § 707.03. Water Testing Requirements Upon Sale of Real Property.**
- § 707.04. Water Testing Requirements For Leased Property.**
- § 707.05. Water Testing Requirements For New Wells.**
- § 707.06. Duty to Provide Potable Water; Remediation.**
- § 707.07. Water Testing.**
- § 707.08. Period of Test Validity For Sales of Real Property.**
- § 707.09. No Waiver.**
- § 707.10. Promulgation of Rules and Regulations.**
- § 707.11. Public Education and Outreach.**
- § 707.12. Enforcement and Penalties.**
- § 707.13. Reverse Preemption.**
- § 707.14. Separability.**

§ 707.01. Definitions.

1. “Action level” means the concentration of lead that when exceeded triggers the need for treatment or remedial action.

2. “Authorized representative” means a person authorized by a certified laboratory to collect drinking water sample(s) on behalf of the certified laboratory.

3. “Certified laboratory” means any laboratory certified by the New York State Department of Health pursuant to section five hundred two of the New York State Public Health Law to test for drinking water contaminants.

4. “Contaminant” means any physical, chemical, microbiological or radiological substance or matter in water that is included in the term “parameter” defined in this Chapter.

5. “Department” means the Westchester County Department of Health.

6. “First draw tap sample” means, for the purposes of lead analysis, a one liter sample of water collected from a cold water tap after the water has stood in the plumbing system for at least six hours and is collected without flushing the tap.

7. “Flushed Water Sample” means, for purposes of lead analysis, water that has been taken from a cold water tap after the water has been allowed to flush through the plumbing system and the tap for at least two minutes or until the water changes to a cold temperature, whichever is later.

8. “Maximum contaminant level” or “MCL” means the maximum permissible level of a contaminant in drinking water as established in Part 5 of the New York State Sanitary Code.

9. “Parameter” includes, but is not limited to, a contaminant, constituent, substance, metal, inorganic or organic chemical, and characteristics that are used to designate an analyte, group of analytes, attribute, or physical property for which a certified laboratory may be approved to perform analysis of regulatory samples and report results.

10. “Potable water” means water which meets the drinking water quality requirements established in Part 5 of the New York State Sanitary Code.

11. “Primary parameter” or “Primary contaminant” means a drinking water contaminant or parameter related to sanitary water quality for which the New York State Department of Health has specified a maximum contaminant level.
12. “Primary parameter water test failure” means that one or more of the primary parameters or contaminants tested pursuant to this Chapter exceeds the specified maximum contaminant level or action level.
13. “Private well” means an individual water supply system, a private water supply or private water system as defined in Article VII of the Westchester County Sanitary Code.
14. “Private Well Water Test Reporting Form” means the standardized form prescribed by the Department to be used by a certified laboratory to disseminate water test results in compliance with this Chapter.
15. “State drinking water quality standards” means the drinking water quality requirements established in Part 5 of the New York State Sanitary Code.
16. “Secondary parameter” or “Secondary contaminant” means a drinking water parameter or contaminant related to aesthetic water quality, such as iron, chloride, and manganese, for which either the New York State Department of Health has specified a maximum contaminant level or there exists guidelines or an optimum range. Secondary parameter shall also include pH and sodium.
17. “Secondary parameter water test failure” means that one or more of the secondary parameters or contaminants tested pursuant to this Chapter exceeds the specified MCL, guidelines or optimum range. Treatment or remediation shall not be required where a water test discloses secondary parameter water test failure.

18. “Water treatment system” means a device or process applied to the drinking water at a house or building for the purpose of reducing contaminants in the drinking water distributed in the house or building. Examples include, but are not limited to, particulate filters, water softeners, carbon filters, reverse osmosis filters, ultraviolet disinfection systems, chlorination systems and corrosion control systems.

§ 707.02. Applicability.

A. This Law shall apply to:

(1) the sale of any real property the potable water supply for which is a private well but shall not apply to gifts of real property nor to transfers of property that occur by operation of law; and

(2) the lease of any real property the potable water supply for which is a private well.

B. The provisions of this Chapter shall not apply to real property where the potable water supply has five (5) or more service connections or regularly serves an average of twenty-five (25) or more individuals daily for at least sixty (60) days out of the year.

§ 707.03. Water Testing Requirements Upon Sale of Real Property.

A. Upon the signing of a contract of sale for any property within Westchester County served by a private well, the seller of such property shall cause a water test to be conducted in the manner established, and for at least the parameters required, in this Chapter. The seller shall arrange and pay for the cost of this testing, and, within ten (10) days of the execution of the contract, provide the purchaser of the property with confirmation that the test has been ordered.

B. Within five (5) days of receipt of the water test results from a certified laboratory, the seller shall deliver the water testing report to the purchaser. The purchaser and seller both shall certify, in writing, that they have received and reviewed the water test results, which written certification shall be exchanged between the seller and purchaser of the property.

C. In the event that the water test discloses a primary parameter water test failure with respect to the reported presence of any primary parameter:

(1) the seller may correct the condition to achieve safe levels of contaminants and consummate the transfer; or

(2) the seller may cancel the contract of sale and return the down payment, in which case neither the seller nor the purchaser shall be liable to the other; or

(3) the seller and purchaser may agree, in writing, to consummate the transfer upon such terms as may be negotiated by the parties and that the purchaser shall correct the condition.

D. Notwithstanding any provision to the contrary, a purchaser or seller subject to the provisions of this Chapter may test for additional parameters not required by this Chapter or by the Department pursuant to rule and regulation.

§ 707.04. Water Testing Requirements For Leased Property.

A. The lessor of any real property for which the potable water supply is a private well shall cause such water to be tested in the manner established, and for at least the parameters required in this Chapter, within twelve (12) months after the effective date of this Chapter, or within twelve (12) months from the date said real property becomes subject to a leasehold in the event that the lessor begins leasing said real property after the effective date of this Chapter, and

at least once every five (5) years thereafter. Within five days (5) of receipt of the water test results from a certified laboratory, the lessor shall deliver the report to all lessees and shall additionally post such results in a prominent place at the entry to the premises. The lessor shall also provide a written copy of the most recent water test results to a new lessee of a rental unit on the property.

§ 707.05. Water Testing Requirements For New Wells And Wells Not In Use.

A. All new wells, prior to first use, must be tested in the manner established, and for at least the parameters required, in this Chapter.

B. All wells not in use as a potable water supply for a period of five (5) years shall be treated as new wells, and must be tested in the manner established, and for at least the parameters required, in this Chapter.

§ 707.06. Duty to Provide Potable Water; Remediation

A. Potable Water. In the event that any part of a residence is occupied at the time a water test discloses a primary parameter water test failure or becomes occupied thereafter, the owner of the property shall immediately provide potable water and continue to provide potable water until such time as the condition is corrected or remediated.

B. Remediation of Condition. Where a water test discloses a primary parameter water test failure with respect to the reported presence of any primary parameter:

(1) For sales of real property:

(a) In the event that the seller elects to correct the condition, pursuant to subdivision (c)(1) of section 707.03, the seller shall remediate or correct the condition within sixty (60) days or as soon as practicable; or

(b) In the event that the seller elects to cancel the contract of sale, pursuant to subdivision (c)(2) of section 707.03, and any part of the residence is occupied at the time the test discloses a primary parameter water test failure or becomes occupied thereafter, the seller shall remediate or correct the condition within sixty (60) days or as soon as practicable; or

(c) In the event that the seller and purchaser agree to consummate the transfer pursuant to subdivision (c)(3) of section 707.03, the purchaser shall remediate or correct the condition within sixty (60) days of closing or as soon as practicable.

(2) For leased residences, the lessor shall:

(a) in the case of a vacant residence, have the option of either correcting the condition at his or her own cost and expense prior to renting the property or refraining from renting the property until such time as the lessor either performs the necessary remediation or connects to the public water supply.

(b) in the event that any part of a residence is rented or occupied, the lessor must immediately provide potable water and within sixty (60) days, or as soon as is practicable, remediate or correct the condition.

(3) Should the lessor refrain from performing the obligations created by this Chapter, the lessee, in the event the property is rented, upon prior written notice to the lessor, may, at the lessee's personal expense, remediate the condition and obtain subsequent test of the water and

set off the cost of such remediation and subsequent water test by a reduction in rent until the cost is covered by such rental reduction.

(4) For new wells or wells not in use:

(a) the well may not be used as a potable water supply until the condition is remediated or corrected and a subsequent test establishes a safe level of contaminants.

C. Upon remediation of the condition, a subsequent water test must be conducted within thirty (30) days establishing a safe level of contaminants.

§ 707.07. Water Testing.

A. Every water test conducted in accordance with this Chapter shall include a test for at least the following parameters: (1) primary parameters: bacteria (total coliform); either fecal coliform or *Escherichia coli* (e-coli) if the sample tests positive for total coliform bacteria; nitrate; arsenic; lead; all primary organic contaminants (POCs) included in Part 5 of the New York State Sanitary Code; vinyl chloride; and methyl-tertiary-butyl-ether (MTBE); and (2) secondary parameters: pH; iron; manganese; sodium; and chloride.

B. The Department, by rule and regulation, may develop a list of additional parameters that the Department deems significant that shall be tested for as part of any water test to be conducted in accordance with this Chapter.

C. Water Sample collection. The water sample shall be collected by an employee or authorized representative of a certified laboratory.

D. Water Sample location.

(1) Water sampling locations for compliance with this Chapter shall be as follows:

(a) If there is no water treatment system in use on the subject property, samples shall be collected from a primary cold water, nonaerated spigot or tap that draws from, or feeds water to, the potable water system of the subject property.

(b) Where a water treatment system is in use on the subject property, the sample shall be collected as follows:

(i) The water treatment system shall be disconnected or otherwise disabled prior to the collection of the water sample; or

(ii) The sample shall be collected at a location prior to the water treatment system.

(2) In the case of new well construction and installation where there is no spigot or tap on the subject property, the sample may be collected directly at the wellhead (raw water sample).

(3) For lead analysis, two water samples must be collected: a first draw tap sample and a flushed water sample.

E. Water testing by laboratories; conditions.

(1) Any water test conducted in accordance with this Chapter shall be conducted by a certified laboratory.

(2) Any water test results provided by a certified laboratory to the person or persons requesting the test shall include the maximum contaminant levels, guidelines, action level for lead analysis, optimum range or other established drinking water quality standards, if any, prescribed by the Department for the parameters tested and shall be transmitted on a standardized Private Well Water Testing Reporting Form prescribed by the Department. The Private Well Water Testing Form shall provide information regarding remediation funding

alternatives available, and shall contain a statement providing that additional information may be obtained by logging onto the Department's website at www.westchestergov.com/health or contacting the Department at (914) 813-5000.

(3) The laboratory, within five (5) business days of the water test results, shall submit the water test results to the person(s) who requested the test and the Department, together with the following information:

- (a) A statement that the testing is for the purpose of complying with this Chapter;
- (b) The location of the real property, described by block and lot number, street address, municipality, and county;
- (c) The name and mailing address of the person or persons making the request for the test;
- (d) The name of the employee or authorized representative of the laboratory who collected the water sample;
- (e) The date and time that the water sample was collected and the specific point of collection;
- (f) The date and time the sample was analyzed by the laboratory;
- (g) One or more of the following statement(s), as applicable, at the top of the form

prior to listing the individual results as follows:

- (i) If all analytical results are below the applicable maximum contaminant levels, guidelines and within the optimal pH range, the statement shall read: "All analytical results meet primary and secondary contaminant standards for drinking water."

(ii) If the analytical result for one or more primary parameters exceeds maximum contaminant levels, the statement shall read: “One or more of the analytical results do not meet primary water quality standards for drinking water.”

(iii) If the analytical result for one or more secondary parameters exceeds the guidelines or optimal range, the statement shall read: “One or more of the analytical results do not meet secondary contaminant standards for drinking water.”; and

(h) Such other information as may be required by the Department.

(4) The Department may require laboratories to submit electronically the information required pursuant to this Chapter.

(5) A laboratory shall not release water test results to any person except the purchaser and seller of the real property at issue, the lessor and lessee(s) of the real property at issue, any person authorized by the purchaser, seller, lessor or lessee(s), as the case may be, the Department of Health, or any person designated by court order.

(6) The Department shall compile the data accumulated from the water test results submitted by laboratories pursuant to this Chapter in a manner that shall be useful to the Department, the County, or other governmental entities for the purposes of studying groundwater supplies or contamination in the County.

§ 707.08. Period of Test Validity For Sales of Real Property.

A. In the case of sales of real property, for the purpose of complying with this Chapter:

(1) The results of a water test conducted in accordance with this Chapter, with the exception of the results for coliform (total and fecal), shall remain valid for a period of one (1) year from the date of sample collection.

(2) The results of a water test for coliform (total and fecal) conducted in accordance with this Chapter shall remain valid for a period of six (6) months from the date of sample collection.

(3) A water test shall not be required pursuant to this Chapter if the contract of sale is entered into within the period of test validity, provided that the seller submits the water test results to the purchaser and the Department within ten (10) days of the date of the execution of the contract.

(4) The period of test validity shall also apply to a water test conducted prior to the Chapter's effective date, provided that such water test complies with the requirements of this Chapter.

B. Notwithstanding any provision of this paragraph to the contrary, a purchaser or seller subject to the provisions of this Chapter may retest for a parameter even though the period of test validity has not expired.

§ 707.09. No Waiver.

The testing and reporting requirements of this Chapter may not be waived.

§ 707.10. Promulgation of Rules and Regulations.

The Department shall promulgate rules and regulations at least ninety (90) days prior to the effective date of this Chapter providing for the testing of drinking water subject to the

provisions of this Chapter. All water testing undertaken pursuant to this Chapter must conform to the promulgated rules and regulations.

§ 707.11. Public Education and Outreach.

A. The Department may establish a public information and education program to inform the public of the enactment of this Chapter and the substance of its provisions and requirements, the potential health effects of consuming water from a private well that exceeds maximum contaminant levels and other established water quality standards, 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 Chapter.

B. The Department may provide to the person or persons requesting the water test a copy of the Private Well Water Testing Form, along with an informational document to provide information regarding remediation alternatives available, and refer the purchaser, seller or lessor of the real property in question to the appropriate office or person within the Department, or to the Department's Web site, for further information regarding such alternatives.

C. The Department may make available to the public a general compilation of water test results data arranged or identified by municipality or appropriate geographic area therein, but which does not include names, specific addresses or location information.

§ 707.12. Enforcement and Penalties.

A. The Department of Health shall have sole jurisdiction to enforce the provisions of this Chapter.

B. Any seller, purchaser or lessor who violates any provision of this Chapter shall be subject to the imposition of a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00).

C.

(1) Each day a violation of Section 707.06(A) exists shall be deemed a separate additional violation.

(2) Any violation of Section 707.06(B) not corrected within one month of the initial violation date shall be subject to a penalty in an amount not to exceed ten thousand dollars (\$10,000.00) for each violation.

D. No penalty shall be imposed as provided for herein unless the alleged violator has received notice of the charge against him or her and has had an opportunity to be heard as provided for in the Westchester County Sanitary Code.

E. Any civil penalty assessed by the Westchester County Commissioner of Health under this subdivision shall be reviewable in a proceeding under Article 78 of the New York Civil Practice Law and Rules.

F. The Commissioner of the Westchester County Department of Health, acting through the County Attorney, may bring suit for collection of any assessed civil penalty in any court of competent jurisdiction.

§ 707.13. Reverse Preemption.

This chapter shall be null and void on the day that Federal or Statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and

promulgates regulations preempting such action by the County of Westchester. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

§ 707.14. Separability.

If any section, subsection, sentence, clause, phrase or portion of this local law is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 2. This Local Law shall take effect one hundred and eighty (180) days after its enactment.