

**FREQUENTLY ASKED
QUESTIONS AND ANSWERS
REGARDING
PRIVATE WELL WATER TESTING LAW
IN
WESTCHESTER COUNTY, NEW YORK**

Applicability & General Requirements

1. What does the Private Well-Water Testing Law, Westchester County Local Law 7 of 2007, Laws of Westchester County § 707.01 et seq. (PWTL) require?
2. What types of properties are subject to the testing requirement?
3. When in the real-estate sales process does testing have to happen? When the contract is signed? What about rentals? What about new wells or wells that have not been in use?
4. When do the testing requirements take effect?
5. How much will the testing cost? Who pays for the testing?
6. What will happen if the testing is not done? Will the property sale be void?
7. My property has public water for drinking, and also an on-site well used only for other purposes such as lawn watering. Does that well have to be tested?
8. Does the testing requirement apply to drinking water wells at newly constructed residences?
9. What contaminants must the well water be tested for?
10. What is the difference between a primary and secondary contaminant?
11. Are there additional regulations that apply to the Private Well-Water Testing Law?
12. Where can I find a copy of the Law and the Westchester County Health Department Rules & Regulations For Private Well water Testing?
13. If testing reveals that the well water system does not meet drinking water quality standards for one or more of the contaminants tested, does treatment have to be installed?
14. If treatment is currently installed, does my well still need to be tested?
15. If treatment is currently installed, is this treatment acceptable when water testing does not meet drinking water quality standards for one or more primary contaminants?

Q1: What does the Private Well-Water Testing Law, Westchester County Local Law 7 of 2007, Laws of Westchester County § 707.01 et seq. (PWTL) require?

A1: The Law applies to properties served by private wells used for drinking water, and requires that private well water systems be tested for primary and secondary contaminants upon the sale of any real property, and for leased real property by November 19, 2008 (or within twelve (12) months from the date that any real property becomes subject to a leasehold if a lessor begins leasing the real property after the law's effective date (i.e., November 19, 2007)) and at least once every five (5) years thereafter. The Law also requires that all new private wells, prior to first use, and all private wells not in use as a potable water supply for a period of five (5) years must be tested. The results of the water test must be delivered to both the buyer and seller, or in the case of a leased property, to the lessee(s). The law contains provisions on the rights and responsibilities of parties whenever testing reveals that the well water system does not meet drinking water quality standards for one or more of the contaminants tested, and sets forth the procedural requirements placed on the parties to remediate or correct the condition to establish safe levels of contaminants. The Law does not apply to a property served by a regulated Public Water Supply where the potable water supply system either serves five or more properties or regularly serves an average of twenty-five (25) or more individuals daily for at least sixty (60) days out of the year.

Q2: What types of properties are subject to the testing requirement?

A2: The Law covers SALES and LEASES of properties served by private wells, as well as properties with NEW wells or wells that have not been in use for a period of five years. The law does not apply to gifts of real property nor to transfers of property that occur by operation of law. The law also does not apply to real property served by a public water system.

Q3: When in the real-estate sales process does testing have to happen? When the contract is signed? What about rentals? What about new wells or wells not in use?

A3: The Law requires the following:

- Upon the signing of a **contract of sale** for a property subject to the Law, the seller must cause a water test to be conducted in the manner provided, and for at least the contaminants required, by the Law.
- The lessor of real property served by a private well must test the well water: (1) by November 19, 2008; or (2) within twelve (12) months from the date that any real property becomes subject to a leasehold if a lessor begins leasing the real property after the law's effective date (i.e., November 19, 2007)); and (3) at least once every five (5) years after the dates established in (1) or (2) above. Results must be provided to current lessees within (5) days of receipt of water test results. Every time a rental property subject to the Law is **leased**, a written copy of the most recent test results must be given to the lessee.
- All **new** wells, prior to first use must have the well water tested prior to use. All wells not in use for a period of five (5) years are treated as new well and must be tested prior to use.

Q4: When do the testing requirements take effect?

A4: The effective date of the Law is Monday, November 19, 2007. Accordingly, on and after that date, all sales of property served by private wells, all new wells and wells that have not been in use for a period of five (5) years are subject to the Private Well-Water Testing Law and are required to meet the testing requirements. Testing is not required for real estate transactions that were already under contract before the statute went into effect (November 19, 2007). The testing requirement for leased properties must be completed by: (1) November 19, 2008; or (2) within twelve (12) months from the date that any real property becomes subject to a leasehold if a lessor begins leasing the real property after the law's effective date (i.e., November 19, 2007)); and (3) at least once every five (5) years after the dates established in (1) or (2) above.

While testing is not required under the law for real estate transactions under contract prior to November 19, 2007, the County Department of Health recommends that well water be tested in connection with the real estate sale. This testing provides important water quality information that people and their families should know.

Q5: How much will the testing cost? Who pays for the testing?

A5: Laboratories testing rates vary, depending on how hard it is to collect the sample, the location of the property in relation to the lab, and other factors. The DOH estimates that the average price will be between \$400 and \$450. In the case of the sale of real property, the seller is required to arrange and pay for the cost of water testing. In the case of leased property, the lessor must obtain and pay for the testing and provide the results to the tenant.

Q6: What will happen if the testing is not done? Will the property sale be void?

A6: Testing of your well water is important to your family's health. If testing is not done, you and your family may face a health risk and not know it. While the property sale may not be void, offenders may be subject to enforcement action by the County Department of Health.

Q7: My property has public water supply for drinking, and also an on-site well used only for other purposes such as lawn watering. Does that well have to be tested?

A7: No. Only drinking water wells are subject to the law.

Q8: Does the testing requirement apply to newly constructed residences?

A8: Yes, the law applies to any drinking water well if the well is newly constructed and to any drinking water well at existing residences if the property is being sold or leased.

Q9: What contaminants must the well water be tested for?

A9: All wells must be tested for the following primary contaminants: total coliform bacteria; nitrate, arsenic, lead, all primary organic contaminants (POCs) including in Part 5 of the New York State Sanitary Code, vinyl chloride; and methyl-tertiary-butyl-ether (MTBE); and the following secondary contaminants: pH, iron, manganese, sodium and chloride. If sample tests positive for total coliform bacteria, a test must also be conducted for either fecal coliform or Eschericia coli (e-coli). Appendix A of the Westchester County Health Department Rules & Regulations contains a table showing all contaminants that must be tested with their corresponding Maximum Contaminant Level (MCL), sources in drinking water, health effects, and recommended treatment.

Q10: What is the difference between a primary and secondary contaminant?

A10: A primary parameter or contaminant is a term that describes the maximum contaminant level set by the New York State Department of Health for contaminants such as bacteria, nitrate and arsenic. Primary contaminants impact sanitary water quality. Wells that fail the primary contaminant tests pose a health risk. A secondary parameter or contaminant generally refers to contaminants related to aesthetic water quality, such as iron, chlorides, and manganese, and also include sodium and pH.

Q11: Are there additional regulations that apply to the Private Well-Water Testing Law?

A11: The Law requires that the Westchester County Department of Health promulgate Rules & Regulations to supplement the Law which may be found at www.westchestergov.com/health

Q12: Where can I find a copy of the Law and the Westchester County Health Department Rules & Regulations For Private Well water Testing?

A12: Both the Law and the Rules & Regulations may be found at the Westchester County Department of Health website www.westchestergov.com/health.

Q13: If testing reveals that the well water system does not meet drinking water quality standards for one or more of the contaminants tested, does treatment have to be installed?

A13: Treatment must be installed only when one or more primary contaminants do not meet drinking water quality standards following any other remedial actions taken. If there are only secondary contaminants that do not meet drinking water quality standards then treatment is not required. Section 3.0 of the Westchester County Health Department Rules & Regulations provides details on required remediation and treatment.

Q14: If treatment is currently installed, does my well still need to be tested?

A14: Yes.

Q15: If treatment is currently installed, is this treatment acceptable when water testing does not meet drinking water quality standards for one or more primary contaminants?

A15: Maybe. Appropriate remediation and treatment measures are summarized in Section 3 and Appendix A of the Westchester County Health Department Rules & Regulations.

Collection & Analysis of Samples

1. Who must collect the sample? May I do it myself?
2. May a real estate agent collect water samples for analysis?
3. Where can I find a list of certified laboratories ?
4. Where in my house should the water sample be collected? What if I have a water softener or other treatment unit installed? Is the collection location the same for lead analysis?
5. For lead analysis, what is the difference between a first draw sample and a flushed water sample?
6. Previously, I had water testing done for other reasons. May I use those test results to comply with the PWTL? For example, may I use test results from four months ago?
7. Can more than one laboratory be used for the testing?
8. May I test my well for additional parameters not required in the PWTL or its rules and regulations?
9. Who pays for the sampling and testing?

Q1: Who must collect the sample? May I do it myself?

A1: The sample must be collected by either an employee of a laboratory certified by the New York State Department of Health to test for drinking water contaminants; or by an authorized representative of such a laboratory. See the PWTL which may be found at the Westchester County Department of Health website www.westchestergov.com/health for definitions of "certified laboratory" and "authorized representative."

Q2: May a real estate agent collect water samples for analysis?

A2: Unless the real estate agent is an employee or authorized representative of a "certified laboratory," as defined in the Law, the real estate agent may **NOT** collect samples for well water testing.

Q3: Where can I find a list of certified laboratories?

A3: The list of certified laboratories registered with the Westchester County Health Department to conduct water tests pursuant to the Law may be found at the Westchester County Department of Health website www.westchestergov.com/health

Q4: Where in my house should the water sample be collected? What if I have a water softener or other treatment unit installed? Is the collection location the same for lead analysis?

A4: The water sample must be collected on untreated water. If the plumbing in the house or building has a water softener, water filter, or other treatment unit installed, the water treatment system must be disconnected or otherwise disabled prior to the collection of the water sample or the sample must be collected before the water goes through the treatment system. If there is no treatment unit installed, the water may be taken from any cold water, non-aerated spigot or tap that draws from, or feeds water to, the potable water system of the property. In the case of a new well construction and installation where there is no spigot or tap on the property, the sample may be collected directly at the wellhead (raw water sample). For lead analysis, two water samples must be collected: a first draw tap sample and a flushed water sample.

Q5: For lead analysis, what is the difference between a first draw sample and a flushed water sample?

A5: Under the Law, a “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. A “flushed water sample” means 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.

Q6: Previously, I had water testing done for other reasons. May I use those test results to comply with the Law? For example, may I use test results from four months ago?

A6: If the sample was collected and tested in accordance with all the requirements of the Law and the Rules and Regulations promulgated thereunder, the test results may be used to comply with the Law for one year after the sample was collected, except for the coliform results, which may be used for six months after sample collection. Of course, if a new well were installed, the test results from the old well could not be used.

Q7: Can more than one laboratory be used for the testing?

A7: Yes, as long as all the laboratories are certified by the New York State Department of Health for the analysis of the particular parameters the laboratories are analyzing. It is important to note that the party collecting the sample must be an employee or authorized representative of a certified laboratory registered with the Westchester County Health Department to conduct water tests pursuant to the Law. The list of certified laboratories registered with the Westchester County Health Department to conduct water tests pursuant to the Law may be found at the Westchester County Department of Health website www.westchestergov.com/health. However, the Law requires that one lab coordinate and submit all the test results electronically to the Westchester County Health Department.

Q8: May I test my well for additional parameters not required in the Law or the Rules and Regulations?

A8: Yes. The Law and the Rules & Regulations set minimum parameters. Anyone is free to test for more contaminants. If you choose to have additional tests, the Westchester County Health Department recommends using a laboratory certified by the New York State Department of Health for the analysis of that parameter in drinking water. Results of other parameters tested, that are not required to be tested under the Law or the Rules and Regulations, shall not be reported by the Certified Laboratory to the Department. However, the public is advised to contact the Department should there be any questions regarding the results of other parameters tested.

Q9: Who pays for the testing?

A9: When there is a sale of property, the costs for testing for the parameters set forth in the law are borne by the seller. Where the parties to a sale of property test for additional contaminants not included in the Law, the costs for those additional parameters are negotiated between the buyer and the seller. When property is leased, the lessor must obtain and pay for the testing and provide the results to the tenant.

Interpreting Test Results & Subsequent Actions (including treatment)

1. Will the lab tell me if my water is clean?
2. If the well water does not meet one or more of the drinking water standards, does that mean it's not safe to drink?
3. If the well water does not meet one or more of the drinking water standards, can the property sale be completed? Does the water have to be treated before the property is sold or rented?
4. If testing reveals that the well water system does not meet drinking water quality standards for one or more of the primary contaminants tested, who will pay to have the water treated?
5. If a well fails to meet one or more of the standards, will the County DOH make that information public?
6. What are the types of home drinking water treatment devices available, and which are generally effective for specific contaminants?
7. What is the current effective Maximum Contaminant Level (MCL) for Arsenic in potable well water?
8. What can I do to reduce my exposure to arsenic?
9. If the well water does not meet one or more of the drinking water standards, what type of assistance from the County or the State is available for treatment?
10. What happens if a water test discloses a primary parameter water test failure and the premises is occupied as a residence?
11. Who is responsible for correcting or remediating the condition after a water test discloses a primary parameter water test failure?

Q1: Will the lab tell me if my water is clean?

A1: The laboratory is required to report the test results to the person who requested the test, on a Private Well Water Test Reporting Form (pdf format) provided by the County Department of Health. 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." 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." 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."

Q2: If the well water does not meet one or more of the drinking water standards, does that mean it's not safe to drink?

A2: Not necessarily. Some of the standards are based on aesthetics (secondary standards), while some are based on long-term health effects (primary standards). The fact that water tests above the standard would not necessarily mean that the water is unsafe to drink. For example, high levels of iron (secondary standard) in the water are generally not dangerous but do give the water an unpleasant taste. On the other hand, the presence of nitrates (primary standard) above the MCL may cause a condition called blue baby syndrome in infants.

Q3: If the well water does not meet one or more of the drinking water quality standards, can the property sale be completed? Does the water have to be treated before the property is sold or rented?

A3: The law does not prohibit the sale of property if the water fails one or more primary parameter drinking water standards. The seller and purchaser may agree, in writing, to consummate the sale under terms negotiated by the parties and the purchaser shall provide any appropriate remediation and treatment measures as required by the Law and the Rules & Regulations. The seller also has the option of correcting the condition or canceling the contract. Treatment must be installed only when one or more primary contaminants do not meet drinking water quality standards following any other remedial actions taken. If there are only secondary contaminants that do not meet drinking water quality standards then treatment is not required.

Q4: If testing reveals that the well water system does not meet drinking water quality standards for one or more of the primary contaminants tested, who will pay to have the water treated?

A4: In the case of the sale of real property, the seller is required to pay for the cost of water treatment. However, the seller and purchaser may agree, in writing, to consummate the sale under terms that the purchaser shall pay for the cost of the water treatment. In the case of leased property, the lessor must pay for the cost of water treatment.

Q5: If a well fails to meet one or more of the standards, will County Department of Health make that information public?

A5: No. 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. While 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, the information may not include names, specific addresses or location information.

Q6: What are the types of home drinking water treatment devices available, and which are generally effective for specific contaminants?

A6: Appendix A of the Rules & Regulations includes recommended treatment options. Information on home water treatment systems and how to find vendors and manufacturers of such systems may be found at the USEPA website http://www.epa.gov/safewater/faq/pdfs/fs_healthseries_filtration.pdf

Q7: What is the current effective Maximum Contaminant Level (MCL) for Arsenic in potable well water?

A7: The current Maximum Contaminant Level (MCL) for Arsenic in potable water is 0.010 mg/L or 10 ug/L. This standard was set by the EPA to protect consumers from the effects of long-term, chronic exposure to arsenic.

Q8: What can I do to reduce my exposure to arsenic?

A8: Because Arsenic occurs naturally in the environment and as a by-product of some agricultural and industrial activities, it can enter drinking water through the ground or as runoff into surface water sources. If your water contains high level of arsenic, treatment such as reverse osmosis filters or activated alumina filters may be used to reduce the levels of arsenic in drinking water.

Q9: If the well water does not meet one or more of the drinking water standards, what type of assistance from the County or the State is available for treatment?

A9: Generally, homeowners are responsible for installation and maintenance costs that are incurred concerning their potable well water.

Q10: What happens if a water test discloses a primary parameter water test failure and the premises is occupied as a residence?

A10: 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.

Q11: Who is responsible for correcting or remediating the condition after a water test discloses a primary parameter water test failure?

A11: 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, 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, 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, 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. Should the lessor refrain from performing the obligations created by the Law, 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 a 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.

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