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HOUSE BILL DRH50007-RIz-33A* (04/11)

Short Title: Issuance of Advisories/Drinking Water Stds. (Public)

Sponsors: Representative Dixon.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO LIMIT ISSUANCE OF HEALTH ADVISORIES FOR DRINKING WATER TO PARAMETERS FOR WHICH MAXIMUM CONTAMINANT LEVELS (MCLS) OR TREATMENT TECHNIQUES (TTS) HAVE BEEN ESTABLISHED BY STATE OR FEDERAL LAW OR FOR WHICH INTERIM MAXIMUM ALLOWABLE CONCENTRATIONS (IMACS) HAVE BEEN ESTABLISHED FOR A PARAMETER IN THE CONTEXT OF A STATE-LED INVESTIGATION OF CONTAMINATION THAT PRESENTS AN IMMINENT THREAT TO PUBLIC HEALTH, SAFETY, OR WELFARE OR THE ENVIRONMENT, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 87-97 reads as rewritten:

"§ 87-97. Permitting, inspection, and testing of private drinking water wells.

...

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional parameters, including volatile organic compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local



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1 health departments to educate citizens for whom new private drinking water wells are constructed
2 and for citizens who contact local health departments regarding testing an existing well on all of
3 the following:

- 4 (1) The scope of the testing required pursuant to this Article.
- 5 (2) Optional testing available pursuant to this Article.
- 6 (3) The limitations of both the required and optional testing.
- 7 (4) Minimum drinking water standards.

8 (j) Test Results. – The local health department shall provide test results to the owner of
9 the newly constructed private drinking water well and, to the extent practicable, to any leaseholder
10 of a dwelling unit or other facility served by the well at the time the water is sampled. The local
11 health department shall include with any test results provided to an owner of a private drinking
12 water well, information regarding the scope of the required and optional testing as established by
13 rules adopted pursuant to subsection (i) of this section.

14 (j1) Issuance of Health Advisories. – No State agency, local board of health, or local health
15 department shall issue a health advisory for the presence of a contaminant in a newly constructed
16 or other well, other than one for which a (i) maximum contaminant level (MCL) or a treatment
17 technique (TT) has been adopted under the National Primary Drinking Water Regulations by the
18 United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act
19 of 1974, P.L. 93-523, as amended, and for which the MCL or TT has been exceeded for that
20 contaminant; (ii) a MCL or TT has been enacted in the General Statutes or adopted under the
21 North Carolina Administrative Code, and for which the MCL or TT has been exceeded for that
22 contaminant; or (iii) an interim maximum allowable concentration has been established for a
23 substance pursuant to 15 NCAC 02L. 0202 in the context of a State-led investigation of
24 contamination that presents an imminent threat to public health, safety, or welfare or the
25 environment. This subsection shall not be construed or implemented in conflict with requirements
26 of federal law nor shall it be construed or implemented to limit the authority of the Department to
27 require investigation, initial response, or remediation of environmental contamination under any
28 provision of State law necessary to address an imminent threat to public health, safety, or welfare
29 or the environment.

30 (k) Registry of Permits and Test Results. – Each local health department shall maintain a
31 registry of all private drinking water wells for which a construction permit or repair permit is
32 issued that is searchable by address or addresses served by the well. The registry shall specify the
33 physical location of each private drinking water well and shall include the results of all tests of
34 water from each well. The local health department shall retain a record of the results of all tests of
35 water from a private drinking water well until the well is properly closed in accordance with the
36 requirements of this Article and rules adopted pursuant to this Article.

37 (l) Authority Not Limited. – This section shall not be construed to limit any authority of
38 local boards of health, local health departments, the Department of Health and Human Services, or
39 the Commission for Public Health to protect public ~~health~~health, except as limited by subsection
40 (j1) of this section."

41 **SECTION 1.(b)** G.S. 130A-315 reads as rewritten:

42 **"§ 130A-315. Drinking water rules; exceptions; limitation on implied warranties.**

43 (a) The Commission shall adopt and the Secretary shall enforce drinking water rules to
44 regulate public water systems. The rules may distinguish between community water systems and
45 noncommunity water systems.

46 (b) The rules shall:

- 47 (1) Specify contaminants which may have an adverse effect on the public health;
- 48 (2) Specify for each contaminant either:
 - 49 a. A maximum contaminant level which is acceptable in water for human
 - 50 consumption, if it is feasible to establish the level of the contaminant in
 - 51 water in public water systems; or

- 1 b. One or more treatment techniques which lead to a reduction in the level
2 of contaminants sufficient to protect the public health, if it is not
3 feasible to establish the level of the contaminants in water in a public
4 water system; and
- 5 (3) Establish criteria and procedures to assure a supply of drinking water which
6 dependably complies with maximum contaminant levels and treatment
7 techniques as determined in paragraph (2) of this subsection. These rules may
8 provide for:
- 9 a. The minimum quality of raw water which may be taken into a public
10 water system;
- 11 b. A program of laboratory certification;
- 12 c. Monitoring and analysis;
- 13 d. Record-keeping and reporting;
- 14 e. Notice of noncompliance, failure to perform monitoring, variances and
15 exemptions;
- 16 f. Inspection of public water systems; inspection of records required to be
17 kept; and the taking of samples;
- 18 g. Criteria for design and construction of new or modified public water
19 systems;
- 20 h. Review and approval of design and construction of new or modified
21 public water systems;
- 22 i. Siting of new public water system facilities;
- 23 j. Variances and exemptions from the drinking water rules; and
- 24 k. Additional criteria and procedures as may be required to carry out the
25 purpose of this Article.
- 26 (b1) The rules may also establish criteria and procedures to insure an adequate supply of
27 drinking water. The rules may:
- 28 (1) Provide for record keeping and reporting.
- 29 (2) Provide for inspection of public water systems and required records.
- 30 (3) Establish criteria for the design and construction of new public water systems
31 and for the modification of existing public water systems.
- 32 (4) Establish procedures for review and approval of the design and construction of
33 new public water systems and for the modification of existing public water
34 systems.
- 35 (4a) Limit the number of service connections to a public water system based on the
36 quantity of water available to the public water system, provided that the number
37 of service connections shall not be limited for a public water system operating
38 in accordance with a local water supply plan that meets the requirements of
39 G.S. 143-355(1).
- 40 (5) Establish criteria and procedures for siting new public water systems.
- 41 (6) Provide for variances and exemptions from the rules.
- 42 (7) Provide for notice of noncompliance in accordance with G.S. 130A-324.
- 43 (b2) Two or more water systems that are adjacent, that are owned or operated by the same
44 supplier of water, that individually serve less than 15 service connections or less than 25 persons
45 but that in combination serve 15 or more service connections or 25 or more persons, and that
46 individually are not public water systems shall meet the standards applicable to public water
47 systems for the following contaminants: coliform bacteria, nitrates, nitrites, lead, copper, and other
48 inorganic chemicals for which testing and monitoring is required for public water systems on 1
49 July 1994. The standards applicable to these contaminants shall be enforced by the Commission as
50 though the water systems to which this subsection applies were public water systems.

1 (b3) The Department shall not certify or renew a certification of a laboratory under rules
2 adopted pursuant to subdivision (3)b. of subsection (b) of this section unless the laboratory offers
3 to perform composite testing of samples taken from a single public water supply system for those
4 contaminants that the laboratory is seeking certification or renewal of certification to the extent
5 allowed by regulations adopted by the United States Environmental Protection Agency.

6 (c) The drinking water rules may be amended as necessary in accordance with required
7 federal regulations.

8 (d) When a person that receives water from a public water system is authorized by the
9 Utilities Commission, pursuant to G.S. 62-110(g), to charge for the costs of providing water or
10 sewer service, that person shall not be subject to regulation under this Article solely as a result of
11 submetering and billing for water service. The supplying water system shall perform the same
12 level of monitoring, analysis, and record keeping that the supplying system would perform if the
13 providing water system had not been authorized to charge for the costs of providing water or
14 sewer service pursuant to G.S. 62-110(g).

15 (e) When a public water system supplies water through a master meter to a water system
16 not regulated by this Article, the supplying water system is not responsible for operation,
17 maintenance, or repair of the providing water system. The supplying water system shall not be
18 responsible for contamination that is confined to the providing water system if the supplying water
19 system meets applicable requirements for water quality, treatment, and system operation for that
20 contaminant. The supplying water system may monitor the water within the providing water
21 system for contamination pursuant to rules adopted under this Article. The supplying water system
22 and the Department shall have access to the providing water system to investigate water quality
23 problems and to determine whether any contamination is confined to the providing water system
24 and whether the quality of the water supplied by the supplying water system is contributing
25 contamination to the providing water system.

26 (f) If water in the providing water system exceeds the maximum contaminant levels
27 established pursuant to this Article and the Department determines that the supplying water system
28 is not responsible, the supplying water system must notify the providing water system owner in
29 writing within one day of determining that the contamination is confined solely to the providing
30 water system for bacteria, nitrate, and nitrite, and within 30 days for all other contaminants.

31 (g) A supplier of water regulated under this Article shall not be deemed to provide any
32 warranty under Article 2 of Chapter 25 of the General Statutes, including an implied warranty of
33 merchantability or an implied warranty of fitness for a particular purpose.

34 (h) The Department shall not issue or direct any unit of local government to issue a health
35 advisory for the presence of a contaminant in a public water system other than one for which a (i)
36 maximum contaminant level (MCL) or a treatment technique (TT) has been adopted under the
37 National Primary Drinking Water Regulations by the United States Environmental Protection
38 Agency pursuant to the federal Safe Drinking Water Act of 1974, P.L. 93-523, as amended, and
39 for which the MCL or TT has been exceeded for that contaminant; (ii) a MCL or TT has been
40 enacted in the General Statutes or adopted under the North Carolina Administrative Code, and for
41 which the MCL or TT has been exceeded for that contaminant; or (iii) an interim maximum
42 allowable concentration has been established for a substance pursuant to 15 NCAC 02L. 0202 in
43 the context of a State-led investigation of contamination that presents an imminent threat to public
44 health, safety, or welfare or the environment. This subsection shall not be construed or
45 implemented in conflict with requirements of federal law nor shall it be construed or implemented
46 to limit the authority of the Department to require investigation, initial response, or remediation of
47 environmental contamination under any provision of State law necessary to address an imminent
48 threat to public health, safety, or welfare or the environment."

49 **SECTION 2.** This act is effective when it becomes law.