

§ 87-98. Bernard Allen Memorial Emergency Drinking Water Fund.

(a) The Bernard Allen Memorial Emergency Drinking Water Fund is established under the control and direction of the Department. The Fund shall be a nonreverting fund consisting of monies appropriated by the General Assembly or made available to the Fund from any other source.

(b) The Fund may be used to pay for:

- (1) Notification, to the extent practicable, of persons aged 18 and older who reside in any dwelling unit, and the senior official in charge of any business, at which drinking water is supplied from a private drinking water well or improved spring that is located within 1,500 feet of, and at risk from, known groundwater contamination. The senior official in charge of the business shall take reasonable measures to notify all employees of the business of the groundwater contamination, including posting a notice of the contamination in a form and at a location that is readily accessible to the employees of the business.
- (2) The costs of testing of private drinking water wells and improved springs for suspected contamination up to once every three years upon request by a person who uses the well, or more frequent testing if the concentration of one or more contaminants in a private drinking water well is increasing over time and there is a significant risk that the concentration of a contaminant will exceed the drinking water action levels set forth in subsection (c) of this section within a three-year period.
- (3) Additional testing to confirm the results of a previous test.
- (4) The temporary or permanent provision of alternative drinking water supplies to persons whose drinking water well or improved spring is contaminated. Under this section, an alternative drinking water supply includes the repair, such as use of a filtration system, or replacement of a contaminated well or the connection to a public water supply.
- (5) Monitoring of filtration systems used in connection with temporary or permanent alternative drinking water supplies provided pursuant to this section.

(c) The Department shall disburse monies from the Fund based on financial need and on the risk to public health posed by groundwater contamination and shall give priority to the provision of services under this section to instances when an alternative source of funds is not available. The Fund shall not be used to provide alternative water supply to households with incomes greater than three hundred percent (300%) of the current federal poverty level, provided that this income limitation shall not apply in cases of contamination that include per-fluoroalkyl or poly-fluoroalkyl substances. The Fund may be used to provide alternative drinking water supplies if the Department determines that the concentration of one or more contaminants in the private drinking water well or improved spring exceeds the federal maximum contaminant level, or the federal drinking water action level as defined in 40 Code of Federal Regulations § 141.1 through § 141.571 (1 July 2007) and 40 Code of Federal Regulations § 143.3 (1 July 2007). For a contaminant for which a federal maximum contaminant level or drinking water action level has not been established, the State groundwater standard established by the Environmental Management Commission for the concentration of that contaminant, a health goal established by the North Carolina Department of Health and Human Services, or a health advisory standard established by the United States Environmental Protection Agency shall be used to determine whether the Fund may be used to provide alternative drinking water supplies. The Fund may also be used to provide alternative drinking water supplies as provided in this section if the Department determines that the concentration of one or more contaminants in a private drinking

water well is increasing over time and that there is a significant risk that the concentration of a contaminant will exceed the federal maximum contaminant level or drinking water action level, or the State groundwater standard. A determination of the concentration of a contaminant shall be based on a sample of water collected from the private drinking water well within the past 12 months.

(c1) In disbursing monies from the Fund, the Department shall give preference to provision of permanent replacement water supplies by connection to public water supplies and repair or replacement of contaminated wells over the provision of temporary water supplies. In providing alternative drinking water supplies, the Department shall give preference to connection to a public water supply system or to construction of a new private drinking water well over the use of a filtration system if the Department determines that the costs of periodic required maintenance of the filtration system would be cost-prohibitive for users of the alternative drinking water supply.

(c2) If the Department provides an alternative drinking water supply by extension of a waterline, the Department may disburse from the Fund no more than fifty thousand dollars (\$50,000) per household or other service connection. For projects where more than 10 residences are eligible for alternative water supplies under this section, no more than one-third of the total cost of the project may be paid from the Fund. The Department may combine monies from the Fund with monies from other sources in order to pay the total cost of the project.

(c3) The Fund shall be used to provide alternative drinking water supplies only if the Department determines that the person or persons who are responsible for the contamination of the private drinking water well is or are not financially viable or cannot be identified or located and if the Department determines that one of the following applies:

- (1) The contamination of the private drinking water well is naturally occurring.
- (2) The owner of the property on which the private drinking water well is located did not cause or contribute to the contamination or control the source of the contamination.
- (3) The source of the contamination is the application or disposal of a hazardous substance or pesticide that occurred without the consent of the owner of the property on which the private drinking water well is located.

(c4) The Department may use up to one hundred thousand dollars (\$100,000) annually of the monies in the Fund to pay the personnel and other direct costs associated with the implementation of this section.

(c5) The Fund shall not be used for remediation of groundwater contamination.

(c6) Nothing in this section expands, contracts, or modifies the obligation of responsible parties under Article 9 or 10 of Chapter 130A of the General Statutes, this Article, or Article 21A of this Chapter to assess contamination, identify receptors, or remediate groundwater or soil contamination.

(c7) In disbursing monies from the Fund for replacement water supplies, the Department shall give priority to circumstances in which a well is contaminated as the result of nonnaturally occurring groundwater contamination in the area over circumstances in which a well has naturally occurring contamination.

(d) The Department shall establish criteria by which the Department is to evaluate applications and disburse monies from this Fund and may adopt any rules necessary to implement this section.

(e) The Department, in consultation with the Commission for Public Health and local health departments, shall report no later than October 1 of each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources and the Fiscal Research Division of the General Assembly on the implementation of this section. The report shall include the purpose and amount of all expenditures from the Fund during the prior fiscal

year, a discussion of the benefits and deficiencies realized as a result of the section, and may also include recommendations for any legislative action. (2006-255, s. 5.2; 2007-182, s. 2; 2007-323, s. 12.2(a); 2008-107, s. 12.1; 2013-360, s. 14.14; 2014-100, s. 14.21(e); 2017-10, s. 4.22; 2021-180, s. 12.7.)