



BOARD OF HEALTH  
August 3, 2021

The meeting was in Room 9 of the Town hall and was called to order at 5:30 p.m. Present were, Elizabeth Sabounjian, Dr. Dan King, Dr. Jane Williams and Shelly Newhouse, Director of Public Health.

Our next regularly scheduled meeting is on August 17, 2021.

The Board tabled the minutes of July 20, 2021 until the next meeting

**Public hearing - Amendment to Section 6 of the Wilmington health regulations**

Introductions for those present for the hearing:

Jeffrey Hull, Town Manager  
Josh Fontaine, EPA  
Kevin Pechulis, EPA  
Kimberly White, EPA  
Sarah White, EPA  
Suela John, DEP  
Garry Waldeck, DEP  
Diane Baxter, DEP

Chairman, Elizabeth Sabounjian opened the public hearing at 5:40 p.m. Kevin Pechulis started with opening remarks. The purpose and intent of the proposed amendments is one to protect the public from groundwater contamination at the Olin Chemical and Sutton Brook Superfund sites. Second, PRP's will be financially responsible for sampling and testing existing potable wells as long as well owners provide access to the PRP's for testing. Third, the requirement to test wells before use is already in the regulations and the proposed changes add a constituent testing list for both sites. Last, existing irrigation wells do not need to test and broad discretion will be given to any new irrigation wells proposed in the areas of concern. Testing will help EPA and DEP better define the groundwater contamination areas and hopefully shrink them over time by obtaining data.

Ms. Sabounjian stated that she understands the efforts that have been explained and the administrative controls that are needed at these sites. Implementation will be difficult, enforceability could be problematic and the process under these regulations may prove to be open ended. One of the main questions is how can we as the Board of Health make a determination on well use after we get results. Mr. Pechulis answered that if a new well is drilled the testing information and data will be reviewed by DEP and EPA for risk. In regards to Sutton Brook, Kim White stated that any wells in that area are commercial and any new wells proposed would get review by EPA and PRP's would work with EPA for testing and data review. Ms. Sabounjian stated that there is has been lots of cooperative discussions on how to justify a decision of risk after we get data and how the Board would make decisions based on that data. We always run the risk of being challenged and that is concerning to me.

Mr. Pechulis gave an example that PRP's quarterly monitor potable wells for the Olin Superfund Site. At certain times some wells have had hits and warranted bottled water even though there might not be MCL's for these constituents. I am providing these example to show that the data is complicated and

although there are no MCL's, EPA can view the data and if it is concerning enough they can take action. Ms. Sabounjian then stated that it seems that EPA and DEP want us to set the testing parameters and set regulations because they cannot. Mr. Pechulis said that EPA and DEP does not have a mechanism for regulating private wells and they need options to help achieve data gaps.

Ms. Sabounjian gave an example of a home that has their well tested and constituents are near action levels and EPA and DEP says to us that we should deny that well, what is our legal premise on which to deny the use of the well? Dr. Williams has a concern that at what level of these constituents are we enforcing? How do we enforce then and what about the unknown substances. Will we need to add to this list? As a physician I understand the limits and harm, but there are no finite answers on these constituents. In my opinion it should be zero in the water.

Kim White stated that if the data reviewed is questionable we could take a wait and see approach and re-test. Ms. Newhouse stated that there could be a problem with the chain of events that creates for a homeowner if a house is up for sale.

Diane Baxter stated that these well testing parameters could be used as a way to promote proper well testing and notification to the agencies and the homeowners. DEP looks at it as a way to protect the homeowners and/or prospective buyers.

Dr. Williams, in terms of notification to new buyers, it doesn't prohibit them to use the well. How would we address that and enforce that? How can we protect the public health if limits aren't definitively set?

Mr. Pechulis stated that PRP's will always require sampling of wells in these areas at both Superfund Site. Both DEP and EPA are continuing to promote a robust well sampling program. There is a formalized process for review of well data. Josh Fontaine stated that through these regulations we could hopefully get more cooperation from homeowners. There has been well testing being conducted for 10 years and there is still data gaps at the Olin Site and more data will always be needed.

Ms. Sabounjian asked when DEP and EPA goes through the review process, looks at the data, reviews, it and subsequently you do not approve the results, what do we as the Board of Health do with that? Would EPA be able to deny it if an unacceptable risk is found? How do we tell Joe Developer that his test results of the well are unacceptable and then he takes us to court, how do we defend ourselves as a Board? There could be liability on both sides.

Dr. Williams understands that there are data gaps and asked how else data is gathered. Josh Fontaine stated that well testing is not the only way of collecting data. Bedrock sampling and groundwater sampling will be a long process and we currently utilize that ongoing data along with private well results. How will this regulation change your work plan?

Josh Fontaine stated that there are 19 potable wells, and 1 irrigation well in the groundwater study area currently being tested. 94 total wells have been identified since 2011, 43 are potable. We will continue to obtain data and get as much information to determine that our groundwater study area is correct. There is a large public outreach by DEP and EPA that is a continual effort to get well owners as much information as possible and to test their wells. It has been a struggle with homeowners to relay this information on testing and the data received. Our work plan will continue with or without these regulations.

Dr. Williams stated that maybe we just amend section 6.5 to just add NDMA. But still, how does the Board deny a permit with no MCL's. I still see a large issue with enforceability and I feel that EPA and DEP are passing the enforceability difficulty on to us.

Dr. King agreed that if we do not have MCL's how can enforce someone to shut off there well.

Jeff Hull made comments in regards to enforceability that we need to consult with Town Counsel to get those answers.

Ms. Sabounjian stated that the regulations need to be re drafted and another look is needed. Maybe we only keep Section 6.5 and strike Section 6.11.1

Jane made a motion to continue the public hearing to September 21<sup>st</sup>, Dr. King, seconded, voted 3-0. Ms. Sabounjian thanked everyone for participating and all their hard work leading up to today.

### **Coronavirus update**

The Director updated the Board that there are currently 22 active positives in Town. 9 are breakthrough cases of fully vaccinated individuals. She recommended to the School Department that masks should be worn in all K-12 schools by students, staff, and visitors. The Board agreed with her recommendation.

Dr. King motioned to adjourn at 6:45 p.m., voted 3-0.

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**Recording:**  
**Shelly Newhouse, Director of Public Health**