

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 723

Final Reading

Introduced by Bloomfield, 17.

Read first time January 04, 2012

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to the Nebraska Safe Drinking Water Act; to amend
2 sections 71-5301 and 71-5304.01, Reissue Revised Statutes
3 of Nebraska; to eliminate a defined term; to harmonize
4 provisions; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-5301, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 71-5301 For purposes of the Nebraska Safe Drinking Water
4 Act, unless the context otherwise requires:

5 (1) Council means the Advisory Council on Public Water
6 Supply;

7 (2) Department means the Division of Public Health of the
8 Department of Health and Human Services;

9 (3) Director means the Director of Public Health of the
10 Division of Public Health or his or her authorized representative;

11 (4) Designated agent means any political subdivision or
12 corporate entity having the demonstrated capability and authority to
13 carry out in whole or in part the Nebraska Safe Drinking Water Act
14 and with which the director has consummated a legal and binding
15 contract covering specifically delegated responsibilities;

16 (5) Major construction, extension, or alteration means
17 those structural changes that affect the source of supply, treatment
18 processes, or transmission of water to service areas but does not
19 include the extension of service mains within established service
20 areas;

21 (6) Operator means the individual or individuals
22 responsible for the continued performance of the water supply system
23 or any part of such system during assigned duty hours;

24 (7) Owner means any person owning or operating a public
25 water system;

1 (8) Person means any individual, corporation, firm,
2 partnership, limited liability company, association, company, trust,
3 estate, public or private institution, group, agency, political
4 subdivision, or other entity or any legal successor, representative,
5 agent, or agency of any of such entities;

6 (9) Water supply system means all sources of water and
7 their surroundings under the control of one owner and includes all
8 structures, conduits, and appurtenances by means of which such water
9 is collected, treated, stored, or delivered except service pipes
10 between street mains and buildings and the plumbing within or in
11 connection with the buildings served;

12 (10)(a) Public water system means a system for providing
13 the public with water for human consumption through pipes or other
14 constructed conveyances, if such system has at least fifteen service
15 connections or regularly serves an average of at least twenty-five
16 individuals daily at least sixty days per year. Public water system
17 includes (i) any collection, treatment, storage, and distribution
18 facilities under control of the operator of such system and used
19 primarily in connection with such system and (ii) any collection or
20 pretreatment storage facilities not under such control which are used
21 primarily in connection with such system. Public water system does
22 not include a special irrigation district. A public water system is
23 either a community water system or a noncommunity water system.

24 (b) Service connection does not include a connection to a
25 system that delivers water by a constructed conveyance other than a

1 pipe if (i) the water is used exclusively for purposes other than
2 residential uses, consisting of drinking, bathing, cooking, and other
3 similar uses, (ii) the department determines that alternative water
4 to achieve the equivalent level of public health protection provided
5 by the Nebraska Safe Drinking Water Act and rules and regulations
6 under the act is provided for residential or similar uses for
7 drinking and cooking, or (iii) the department determines that the
8 water provided for residential or similar uses for drinking, cooking,
9 and bathing is centrally treated or treated at the point of entry by
10 the provider, a pass-through entity, or the user to achieve the
11 equivalent level of protection provided by the Nebraska Safe Drinking
12 Water Act and the rules and regulations under the act.

13 (c) Special irrigation district means an irrigation
14 district in existence prior to May 18, 1994, that provides primarily
15 agricultural service through a piped water system with only
16 incidental residential or similar use if the system or the
17 residential or similar users of the system comply with exclusion
18 provisions of subdivision (b)(ii) or (iii) of this subdivision;

19 (11) Drinking water standards means rules and regulations
20 adopted and promulgated pursuant to section 71-5302 which (a)
21 establish maximum levels for harmful materials which, in the judgment
22 of the director, may have an adverse effect on the health of persons
23 and (b) apply only to public water systems;

24 (12) Lead free (a) when used with respect to solders and
25 flux means solders and flux containing not more than two-tenths

1 percent lead, (b) when used with respect to pipes and pipe fittings
2 means pipes and pipe fittings containing not more than eight percent
3 lead, and (c) when used with respect to plumbing fittings and
4 fixtures intended by the manufacturer to dispense water for human
5 ingestion means fittings and fixtures that are in compliance with
6 standards established in accordance with 42 U.S.C. 300g-6(e) as such
7 section existed on July 16, 2004;

8 (13) Community water system means a public water system
9 that (a) serves at least fifteen service connections used by year-
10 round residents of the area served by the system or (b) regularly
11 serves at least twenty-five year-round residents;

12 (14) Noncommunity water system means a public water
13 system that is not a community water system; and

14 (15) Nontransient noncommunity water system means a
15 public water system that is not a community water system and that
16 regularly serves at least twenty-five of the same individuals over
17 six months per year. ; ~~and~~

18 ~~(16) Small system means a public water system that~~
19 ~~regularly serves less than ten thousand individuals.~~

20 Sec. 2. Section 71-5304.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 71-5304.01 (1) Whenever the director has reason to
23 believe that a violation of any provision of the Nebraska Safe
24 Drinking Water Act, any rule or regulation adopted and promulgated
25 under such act, or any term of a variance or exemption issued

1 pursuant to section 71-5310 has occurred, he or she may cause an
2 administrative order to be served upon the permittee or permittees
3 alleged to be in violation. Such order shall specify the violation
4 and the facts alleged to constitute a violation and shall order that
5 necessary corrective action be taken within a reasonable time to be
6 prescribed in such order. Any such order shall become final unless
7 the permittee or permittees named in the order request in writing a
8 hearing before the director no later than thirty days after the date
9 such order is served. In lieu of such order, the director may require
10 that the permittee or permittees appear before the director at a time
11 and place specified in the notice and answer the charges. The notice
12 shall be served on the permittee or permittees alleged to be in
13 violation not less than thirty days before the time set for the
14 hearing.

15 (2) Whenever the director finds that an emergency exists
16 requiring immediate action to protect the public health and welfare
17 concerning a material which is determined by the director to be
18 harmful or potentially harmful to human health, the director may,
19 without notice or hearing, issue an order reciting the existence of
20 such an emergency and requiring that such action be taken as the
21 director deems necessary to meet the emergency. Such order shall be
22 effective immediately. Any person to whom such order is directed
23 shall comply immediately and, on written application to the director,
24 shall be afforded a hearing as soon as possible and not later than
25 ten days after receipt of such application by such affected person.

1 On the basis of such hearing, the director shall continue such order
2 in effect, revoke it, or modify it.

3 (3) The director shall afford to the alleged violator an
4 opportunity for a fair hearing before the director under the
5 Administrative Procedure Act.

6 (4) In addition to any other remedy provided by law, the
7 director may issue an order assessing an administrative penalty upon
8 a violator.

9 (5) The range of administrative penalties assessed under
10 this section for a public water system serving ten thousand or more
11 persons shall be not less than one thousand dollars per day or part
12 thereof for each violation, not to exceed twenty-five thousand
13 dollars in the aggregate. Administrative penalties for a ~~small system~~
14 public water system serving fewer than ten thousand persons shall be
15 not more than five hundred dollars per day or part thereof for each
16 violation, not to exceed five thousand dollars in the aggregate. In
17 determining the amount of the administrative penalty, the department
18 shall take into consideration all relevant circumstances, including,
19 but not limited to, the harm or potential harm which the violation
20 causes or may cause, the violator's previous compliance record, the
21 nature and persistence of the violation, any corrective actions
22 taken, and any other factors which the department may reasonably deem
23 relevant. The administrative penalty assessment shall state specific
24 amounts to be paid for each violation identified in the order.

25 (6) An administrative penalty shall be paid within sixty

1 days after the date of issuance of the order assessing the penalty.
2 Any person who fails to pay an administrative penalty by the final
3 due date shall be liable to the state for the penalty amount plus any
4 statutory interest rate applicable to judgments. An order under this
5 section imposing an administrative penalty may be appealed to the
6 director in the manner provided for in subsection (1) of this
7 section. Any administrative penalty paid pursuant to this section
8 shall be remitted to the State Treasurer for distribution in
9 accordance with Article VII, section 5, of the Constitution of
10 Nebraska. An action may be brought in the appropriate court to
11 collect any unpaid administrative penalty and for attorney's fees and
12 costs incurred directly in the collection of the penalty.

13 Sec. 3. Original sections 71-5301 and 71-5304.01, Reissue
14 Revised Statutes of Nebraska, are repealed.