

LEGISLATIVE BILL 31

Approved by the Governor March 20, 2003

Introduced by Schrock, 38

AN ACT relating to water; to amend sections 46-606, 46-1233.01, 71-5301, 71-5303, 71-5304, and 71-5309, Revised Statutes Supplement, 2002; to change provisions relating to water well seals, water well registration fees, public water systems, and public water system operators; to define a term; to provide powers and duties; to provide an operative date; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 46-606, Revised Statutes Supplement, 2002, is amended to read:

46-606. (1) The Director of Natural Resources shall collect in advance a registration fee of ~~thirty~~ forty dollars and the fee required by section 46-1224 for each water well registered under section 46-602 except as provided in subsections (2) through (5) of this section.

(2) For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the director shall collect in advance a registration fee of ~~thirty~~ forty dollars and the fee required by section 46-1224 for each of the first ten such water wells registered under section 46-602, and for each group of ten or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of ~~thirty~~ forty dollars and the fee required by section 46-1224.

(3) For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the director shall collect in advance a fee of ~~thirty~~ forty dollars for each such series and the fee required by section 46-1224.

(4) For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, the director shall collect in advance a registration fee of ~~thirty~~ forty dollars and the fee required by section 46-1224 for each of the first five such water wells registered under section 46-602, and for each group of five or fewer such water wells registered thereafter, the director shall collect in advance a registration fee of ~~thirty~~ forty dollars and the fee required by section 46-1224. However, if such water wells are a part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected as if only one water well was being registered and the fee required by section 46-1224 shall be collected.

(5) (a) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, the director shall collect in advance a registration fee of ~~thirty~~ forty dollars and the fee required by section 46-1224 for each of the first two such wells registered under section 46-602.

(b) Any additional water wells which are part of a series registered under this subsection shall not be subject to a new well registration fee.

(6) The director shall remit the fees collected to the State Treasurer for credit to the appropriate fund. From the registration fees required by subsections (1) through (5) of this section, the State Treasurer shall credit to the Department of Natural Resources Cash Fund ~~one-half~~ the amount determined by the Department of Natural Resources to be necessary to pay for the costs of processing notices filed pursuant to section 46-230, the costs of water resources update notices required by section 76-2,124, and the costs for making corrections to water well registration data authorized by subsections (6) and (7) of section 46-602 and shall credit the remainder of The State Treasurer shall credit the fees required by section 46-1224 to the Water Well Standards and Contractors'

Licensing Fund. ~~This subsection terminates on December 31, 2004.~~

Sec. 2. Section 46-1233.01, Revised Statutes Supplement, 2002, is amended to read:

46-1233.01. Except as provided in section 46-1233, ~~after September 6, 1991,~~ no water well shall be opened or the seal broken by any person other than an owner of the water well unless (1) the opening or the breaking of the seal is carried out by a certified water well monitoring technician or natural resources ground water technician or (2) the opening or breaking of the seal is carried out by the operator of a public water system in the course of his or her employment.

Sec. 3. Section 71-5301, Revised Statutes Supplement, 2002, is amended to read:

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

- (1) Council means the Advisory Council on Public Water Supply;
- (2) Director means the Director of Regulation and Licensure or his or her authorized representative;
- (3) Designated agent means any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the Nebraska Safe Drinking Water Act and with which the Director of Regulation and Licensure has consummated a legal and binding contract covering specifically delegated responsibilities;
- (4) Major construction, extension, or alteration means those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but does not include the extension of service mains within established service areas;
- (5) Operator means the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;
- (6) Owner means any person owning or operating a public water system;
- (7) Person means any individual, firm, partnership, limited liability company, association, company, corporation, political subdivision, or other entity;
- (8) Water supply system means all sources of water and their surroundings under the control of one owner and includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;
- (9) Public water system means a system for providing the public with water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (a) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a noncommunity water system. Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.
- (10) Drinking water standards means rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels for harmful materials which, in the judgment of the Director of Regulation and Licensure, may have an adverse effect on the health of persons and (b) apply

only to public water systems;

(11) Lead free (a) when used with respect to solders and flux means solders and flux containing not more than two-tenths percent lead and (b) when used with respect to pipe and pipe fittings means pipe and pipe fittings containing not more than eight percent lead;

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

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

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

(15) Small system means a public water system that regularly serves less than ten thousand individuals; and

(16) Probation means a disciplinary action not to exceed two years in length during which a certificate holder may continue to operate under terms and conditions fixed by the order of probation.

Sec. 4. Section 71-5303, Revised Statutes Supplement, 2002, is amended to read:

71-5303. (1) No person shall operate or maintain a public water system without first obtaining a permit to operate such system from the director. No fee shall be charged for the issuance of such permit.

(2) The director shall inspect public water systems and report findings to the owner, publish a list of those systems not in compliance, and promote the training of and certify the competence of operators. The director may deny, revoke, suspend, or refuse renewal of a permit or certification, place a certificate holder on probation, issue administrative orders scheduling action to be taken, take emergency action as provided in section 71-5304.01, and seek a temporary or permanent injunction or such other legal process as is deemed necessary to obtain compliance with the Nebraska Safe Drinking Water Act.

(3) The Department of Health and Human Services Regulation and Licensure may deny, revoke, suspend, or refuse to renew a permit or certification or place a certificate holder on probation for noncompliance with the act, the rules and regulations adopted and promulgated under the act, or the terms of a variance or exemption issued pursuant to section 71-5310.

(4) Any person shall be granted, upon request, an opportunity for a hearing before the department under the Administrative Procedure Act prior to the denial or revocation of a permit or certification or the placement of a certificate holder on probation. The denial, ~~or~~ revocation, or the placement on probation by the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 5. Section 71-5304, Revised Statutes Supplement, 2002, is amended to read:

71-5304. (1) The director shall adopt and promulgate necessary minimum rules and regulations governing the siting, design, construction, alteration, classification, and operation of public water systems to insure that such public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological materials which are determined by the director, pursuant to section 71-5302, to be harmful to the physical health of human beings. In adopting such rules and regulations, the director shall attempt to meet the following objectives:

(a) Insure that facilities are physically separated, to the greatest extent possible, from water or land areas which contain high levels of materials which are harmful to humans;

(b) Insure that such facilities, and all parts thereof, are physically sealed so that leakage of harmful materials into the public water system itself from sources outside the system shall not occur;

(c) Insure that all materials which are used in the construction of a system shall not place harmful materials into the public water system;

(d) Insure that all chemicals or other substances used to treat and purify water are free from harmful materials; and

(e) Insure, to the greatest extent possible, that such rules and regulations will allow uninterrupted and efficient operation of public water systems.

(2) The rules and regulations may contain differences and distinctions based on the physical one or more of the following: Physical size of the facilities, and number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the objectives of this section are met.

Sec. 6. Section 71-5309, Revised Statutes Supplement, 2002, is amended to read:

71-5309. (1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system. The director may require, by rule and regulation, that the applicant for a certificate of competency successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for ~~different sizes of~~ public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

(2) Any such certificate of competency may be denied, suspended, revoked, or refused renewal by the director for due cause. The holder of a certificate of competency may also be placed on probation by the director for due cause. Due cause shall include, but not be limited to, (a) fraud in processing the certificate, (b) habitual intoxication or addiction to the use of drugs, (c) conviction of a felony, (d) physical or mental incapacity to perform professional duties, (e) violation of any of the provisions of the Nebraska Safe Drinking Water Act or any rules or regulations adopted and promulgated under such act, and (f) failure to pay the required fee. If a certificate holder is placed on probation, his or her certificate may be revoked if the probationary requirements are not followed. Except in cases of failure to pay the required fees, no certificate of competency shall be denied, suspended, or revoked except after due notice and opportunity for a hearing. Any denial, suspension, or revocation of such certificate of competency or the placement of a certificate holder on probation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 7. This act becomes operative on January 1, 2004.

Sec. 8. Original sections 46-606, 46-1233.01, 71-5301, 71-5303, 71-5304, and 71-5309, Revised Statutes Supplement, 2002, are repealed.