

LEGISLATIVE BILL 383

Approved by the Governor March 1, 1988

Introduced by Health & Human Services Committee, Wesely, 26, Chairperson; Lynch, 13; Morehead, 30; Schellpeper, 18; Pappas, 42; Goodrich, 20; Beyer, 3

AN ACT relating to public health and welfare; to amend sections 71-5301 to 71-5303, 71-5309, 71-5310, and 71-5313, Reissue Revised Statutes of Nebraska, 1943; to change provisions of the Nebraska Safe Drinking Water Act; to define a term; to prohibit the use of certain materials in public water supply systems as prescribed; to provide exceptions; to authorize monitoring of water supplies; to provide for and change disciplinary provisions relating to permits and certificates of competency; to provide for notice of and service of process for certain proceedings; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 71-5301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5301. As used in ~~sections 71-5301 to 71-5313~~ the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

(1) Council shall mean the Advisory Council on Public Water Supply;

(2) Director shall mean the Director of Health or his or her authorized representative;

(3) Designated agent shall mean any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the provisions of ~~sections 71-5301 to 71-5313~~ the Nebraska Safe Drinking Water Act and with whom the director has consummated a legal and binding contract covering specifically delegated responsibilities;

(4) Major construction, extension, or alteration shall mean those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas; but shall not include the extension of service mains within

established service areas;

(5) Operator shall mean 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 shall mean any person owning or operating a public water supply system;

(7) Person shall mean any individual, firm, partnership, association, company, corporation, political subdivision, or other entity;

(8) Water supply system shall mean all sources of water and their surroundings under the control of one owner, and shall include 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 supply system shall mean a water supply system designed to provide the public piped water fit for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. This definition shall include, but not be limited to, (a) any collection, treatment, storage, or 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; and

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

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

Sec. 2. (1) After July 1, 1988, any pipe, pipe fitting, solder, or flux which is used in the installation or repair of any public water supply system shall be lead free.

(2) By July 1, 1988, the owner of any public water supply system shall, by the adoption of plumbing codes or ordinances, contract, or other enforceable

means, require that any solder or flux used in the installation or repair of any residential or nonresidential facility which is connected to the public water supply system be lead free.

(3) The owner of any public water supply system shall inspect the installation or repair of facilities described in subsection (2) of this section to determine compliance with such subsection.

(4) The owner of a public water supply system shall cause any joint or pipe in facilities described in subsection (2) of this section to be replaced if the owner or the director finds that such joint or pipe is not lead free.

(5) This section shall not apply to the repair of leaded joints in cast iron pipes in any public water supply system that are in existence and use on July 1, 1988.

Sec. 3. That section 71-5302, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5302. (1) The director shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water, supplied to consumers through all public water supply systems, shall not contain amounts of chemical, radiological, physical, or bacteriological material ~~which are~~ determined by the director to be harmful to human health.

(2) The director may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water supply systems for chemical, radiological, physical, or bacteriological material determined by the director to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health, and in setting maximum levels for such harmful materials, the director shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) ~~(3)~~ Subject to section 71-5310, state drinking water standards shall apply to each public

water supply system in the state, except that such standards shall not apply to a public water supply system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water supply system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

Sec. 4. That section 71-5303, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5303. (1) Commencing January 1, 1978, no person shall operate or maintain a public water supply 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) To aid in accomplishing the purposes of sections 71-5301 to 71-5313, the~~

(2) The director shall inspect public water supply systems and report findings to the owner, publish a list of those systems not in compliance, and promote the training of and certify the capability competence of operators. The director may deny, revoke, suspend, or refuse renewal of a permit, issue administrative orders scheduling action to be taken, take emergency action as provided in section 5 of this act, and may seek a temporary or permanent injunction or such other legal process as is deemed necessary to obtain compliance with the provisions of sections 71-5301 to 71-5313 the Nebraska Safe Drinking Water Act.

~~(3) The basis for denying or revoking a permit to operate a public water supply system shall be noncompliance with the provisions of sections 71-5301 to 71-5313 or the rules and regulations adopted thereunder.~~

(3) The Department of Health may deny, revoke, suspend, or refuse to renew a permit for noncompliance with the provisions of the Nebraska Safe Drinking Water Act, the rules and regulations adopted and promulgated under such 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 provisions of the Administrative Procedure Act prior to the denial or revocation of a permit. Judicial

review of such denial or revocation may be obtained as provided by such act.

Sec. 5. (1) Whenever the director has reason to believe that a violation of any provision of the Nebraska Safe Drinking Water Act, any rule or regulation adopted and promulgated by the Department of Health under such act, or any term of a variance or exemption issued pursuant to section 71-5310 has occurred, he or she may cause an administrative order to be served upon the permittee or permittees alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the permittee or permittees named in the order request in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the permittee or permittees appear before the director at a time and place specified in the notice and answer the charges. The notice shall be served on the permittee or permittees alleged to be in violation not less than thirty days before the time set for the hearing.

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a material which is determined by the director to be harmful or potentially harmful to human health, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the director, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

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

Sec. 6. (1) The director may require a public water supply system to give notice to the persons served by the system and to the Department of Health whenever the system:

(a) Is not in compliance with an applicable maximum contaminant level or treatment technique

requirement of or a testing procedure prescribed by rules and regulations adopted and promulgated under the Nebraska Safe Drinking Water Act;

(b) Fails to perform monitoring, testing, analyzing, or sampling as required;

(c) Is subject to a variance or exemption; or

(d) Is not in compliance with the requirements prescribed by a variance or exemption.

(2) The director may require a public water supply system to give notice to the persons served by the public water supply system of potential sources of contamination as identified by the director under subsection (2) of section 71-5302, of possible health effects of such contamination, and of possible mitigation measures.

(3) The director shall by rule and regulation prescribe the form and manner for giving such notice.

Sec. 7. That section 71-5309, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5309. (1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water supply systems. In adopting such rules and regulations, the director shall give consideration to the ~~level~~ 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 supply systems shall be operated in such a manner that ~~(1) (a)~~ (a) maximum efficiency can be attained, ~~(2) (b)~~ (b) interruptions in service will not occur, ~~(c) (3)~~ (c) chemical treatment of the water will be adequate to maintain purity and safety, and ~~(4) (d)~~ (d) harmful materials will not enter the public water supply 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 supply system. The rules and regulations, and any tests so administered, may set out different requirements for different sizes of public water supply systems, 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. 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. 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 may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Sec. 8. That section 71-5310, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5310. (1) The director, with the approval of the council, may authorize variances or exemptions from the drinking water standards issued pursuant to section 71-5302 under conditions and in such manner as they deem necessary and desirable. Such ~~that such~~ 7 PROVIDED, variances or exemptions shall be permitted under conditions and in a manner which are not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under the Federal Safe Drinking Water Act, Public Law 93-523, 93rd Congress.

(2) Prior to granting a variance or an exemption, the director shall provide notice, in a newspaper of general circulation serving the area served by the public water supply system, of the proposed exemption or variance and that interested persons may request a public hearing on the proposed exemption or variance. The director may require the system to provide other appropriate notice as he or she deems necessary to provide adequate notice to persons served by the system.

If a public hearing is requested, the director shall set a time and place for the hearing and such hearing shall be held before the Department of Health prior to the variance or exemption being issued. Frivolous and insubstantial requests for a hearing may be denied by the director. An exemption or variance shall be conditioned on monitoring, testing, analyzing, or other requirements to insure the protection of the public health. A variance or an exemption granted shall include a schedule of compliance under which the public water supply system is required to meet each contaminant level or treatment technique requirement for which a variance or an exemption is granted within a reasonable time as specified by the director with the approval of the council.

Sec. 9. Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director under the Nebraska Safe Drinking Water Act may be served on any person affected by such notice, order, or other instrument, personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the Department of Health, or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail directed to the person affected at his or her last-known post office address as shown by the files or records of the department, and proof of service may be made by the affidavit of the person who did the mailing and filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts stated in such certificate or affidavit, and a certified copy shall have like force and effect.

Sec. 10. That section 71-5313, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-5313. Sections 71-5301 to 71-5313 and sections 2, 5, 6, and 9 of this act shall be known and may be cited as the Nebraska Safe Drinking Water Act.

Sec. 11. That original sections 71-5301 to 71-5303, 71-5309, 71-5310, and 71-5313, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 12. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.