

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 31
FINAL READING

Introduced by Schrock, 38

Read first time January 9, 2003

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend sections 46-606, 46-1233.01,
2 71-5301, 71-5303, 71-5304, and 71-5309, Revised Statutes
3 Supplement, 2002; to change provisions relating to water
4 well seals, water well registration fees, public water
5 systems, and public water system operators; to define a
6 term; to provide powers and duties; to provide an
7 operative date; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-606, Revised Statutes Supplement,
2 2002, is amended to read:

3 46-606. (1) The Director of Natural Resources shall
4 collect in advance a registration fee of ~~thirty~~ forty dollars and
5 the fee required by section 46-1224 for each water well registered
6 under section 46-602 except as provided in subsections (2) through
7 (5) of this section.

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

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

21 (4) For water wells constructed as part of a single site
22 plan for monitoring ground water, obtaining hydrogeologic
23 information, or extracting contaminants from the ground, the
24 director shall collect in advance a registration fee of ~~thirty~~
25 forty dollars and the fee required by section 46-1224 for each of
26 the first five such water wells registered under section 46-602,
27 and for each group of five or fewer such water wells registered
28 thereafter, the director shall collect in advance a registration

1 fee of ~~thirty~~ forty dollars and the fee required by section
2 46-1224. However, if such water wells are a part of remedial
3 action approved by the Department of Environmental Quality pursuant
4 to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant
5 to this subsection shall be collected as if only one water well was
6 being registered and the fee required by section 46-1224 shall be
7 collected.

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

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

17 (6) The director shall remit the fees collected to the
18 State Treasurer for credit to the appropriate fund. From the
19 registration fees required by subsections (1) through (5) of this
20 section, the State Treasurer shall credit to the Department of
21 Natural Resources Cash Fund ~~one-half~~ the amount determined by the
22 Department of Natural Resources to be necessary to pay for the
23 costs of processing notices filed pursuant to section 46-230, the
24 costs of water resources update notices required by section
25 76-2,124, and the costs for making corrections to water well
26 registration data authorized by subsections (6) and (7) of section
27 46-602 and shall credit the remainder of the registration fees
28 required by subsections (1) through (5) of this section to the

1 Water Well Decommissioning Fund. From the fees required by section
2 ~~46-1224~~, the State Treasurer shall credit to the Department of
3 ~~Natural Resources Cash Fund one-half the amount determined by the~~
4 ~~Department of Natural Resources to be necessary to pay for the~~
5 ~~costs of the notices filed pursuant to section 46-230, the costs of~~
6 ~~water resources update notices required by section 76-2,124, and~~
7 ~~the costs for making corrections to water well registration data~~
8 ~~authorized by subsections (6) and (7) of section 46-602 and shall~~
9 ~~credit the remainder of~~ The State Treasurer shall credit the fees
10 required by section 46-1224 to the Water Well Standards and
11 Contractors' Licensing Fund. ~~This subsection terminates on~~
12 ~~December 31, 2004.~~

13 Sec. 2. Section 46-1233.01, Revised Statutes Supplement,
14 2002, is amended to read:

15 46-1233.01. Except as provided in section 46-1233, ~~after~~
16 ~~September 6, 1991~~, no water well shall be opened or the seal broken
17 by any person other than an owner of the water well unless (1) the
18 opening or the breaking of the seal is carried out by a certified
19 water well monitoring technician or natural resources ground water
20 technician or (2) the opening or breaking of the seal is carried
21 out by the operator of a public water system in the course of his
22 or her employment.

23 Sec. 3. Section 71-5301, Revised Statutes Supplement,
24 2002, is amended to read:

25 71-5301. For purposes of the Nebraska Safe Drinking
26 Water Act, unless the context otherwise requires:

27 (1) Council means the Advisory Council on Public Water
28 Supply;

1 (2) Director means the Director of Regulation and
2 Licensure or his or her authorized representative;

3 (3) Designated agent means any political subdivision or
4 corporate entity having the demonstrated capability and authority
5 to carry out in whole or in part the Nebraska Safe Drinking Water
6 Act and with which the Director of Regulation and Licensure has
7 consummated a legal and binding contract covering specifically
8 delegated responsibilities;

9 (4) Major construction, extension, or alteration means
10 those structural changes that affect the source of supply,
11 treatment processes, or transmission of water to service areas but
12 does not include the extension of service mains within established
13 service areas;

14 (5) Operator means the individual or individuals
15 responsible for the continued performance of the water supply
16 system or any part of such system during assigned duty hours;

17 (6) Owner means any person owning or operating a public
18 water system;

19 (7) Person means any individual, firm, partnership,
20 limited liability company, association, company, corporation,
21 political subdivision, or other entity;

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

28 (9) Public water system means a system for providing the

1 public with water for human consumption through pipes or, after
2 August 5, 1998, other constructed conveyances, if such system has
3 at least fifteen service connections or regularly serves an average
4 of at least twenty-five individuals daily at least sixty days per
5 year. Public water system includes (a) any collection, treatment,
6 storage, and distribution facilities under control of the operator
7 of such system and used primarily in connection with such system
8 and (b) any collection or pretreatment storage facilities not under
9 such control which are used primarily in connection with such
10 system. Public water system does not include a special irrigation
11 district. A public water system is either a community water system
12 or a noncommunity water system.

13 Service connection does not include a connection to a
14 system that delivers water by a constructed conveyance other than a
15 pipe if (i) the water is used exclusively for purposes other than
16 residential uses, consisting of drinking, bathing, cooking, and
17 other similar uses, (ii) the department determines that alternative
18 water to achieve the equivalent level of public health protection
19 provided by the Nebraska Safe Drinking Water Act and rules and
20 regulations under the act is provided for residential or similar
21 uses for drinking and cooking, or (iii) the department determines
22 that the water provided for residential or similar uses for
23 drinking, cooking, and bathing is centrally treated or treated at
24 the point of entry by the provider, a pass-through entity, or the
25 user to achieve the equivalent level of protection provided by the
26 Nebraska Safe Drinking Water Act and the rules and regulations
27 under the act.

28 Special irrigation district means an irrigation district

1 in existence prior to May 18, 1994, that provides primarily
2 agricultural service through a piped water system with only
3 incidental residential or similar use if the system or the
4 residential or similar users of the system comply with exclusion
5 provisions of subdivision (ii) or (iii) of this subdivision;

6 (10) Drinking water standards means rules and regulations
7 adopted and promulgated pursuant to section 71-5302 which (a)
8 establish maximum levels for harmful materials which, in the
9 judgment of the Director of Regulation and Licensure, may have an
10 adverse effect on the health of persons and (b) apply only to
11 public water systems;

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

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

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

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

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

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

5 Sec. 4. Section 71-5303, Revised Statutes Supplement,
6 2002, is amended to read:

7 71-5303. (1) No person shall operate or maintain a
8 public water system without first obtaining a permit to operate
9 such system from the director. No fee shall be charged for the
10 issuance of such permit.

11 (2) The director shall inspect public water systems and
12 report findings to the owner, publish a list of those systems not
13 in compliance, and promote the training of and certify the
14 competence of operators. The director may deny, revoke, suspend,
15 or refuse renewal of a permit or certification, place a certificate
16 holder on probation, issue administrative orders scheduling action
17 to be taken, take emergency action as provided in section
18 71-5304.01, and seek a temporary or permanent injunction or such
19 other legal process as is deemed necessary to obtain compliance
20 with the Nebraska Safe Drinking Water Act.

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

27 (4) Any person shall be granted, upon request, an
28 opportunity for a hearing before the department under the

1 Administrative Procedure Act prior to the denial or revocation of a
2 permit or certification or the placement of a certificate holder on
3 probation. The denial, ~~or~~ revocation, or the placement on
4 probation by the department may be appealed, and the appeal shall
5 be in accordance with the Administrative Procedure Act.

6 Sec. 5. Section 71-5304, Revised Statutes Supplement,
7 2002, is amended to read:

8 71-5304. (1) The director shall adopt and promulgate
9 necessary minimum rules and regulations governing the siting,
10 design, construction, alteration, classification, and operation of
11 public water systems to insure that such public water systems shall
12 not contain amounts of chemical, radiological, physical, or
13 bacteriological materials which are determined by the director,
14 pursuant to section 71-5302, to be harmful to the physical health
15 of human beings. In adopting such rules and regulations, the
16 director shall attempt to meet the following objectives:

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

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

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

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

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

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

10 Sec. 6. Section 71-5309, Revised Statutes Supplement,
11 2002, is amended to read:

12 71-5309. (1) The director shall adopt and promulgate
13 minimum necessary rules and regulations governing the
14 qualifications of operators of public water systems. In adopting
15 such rules and regulations, the director shall give consideration
16 to the levels of training and experience which are required, in the
17 opinion of the director, to insure to the greatest extent possible
18 that the public water systems shall be operated in such a manner
19 that (a) maximum efficiency can be attained, (b) interruptions in
20 service will not occur, (c) chemical treatment of the water will be
21 adequate to maintain purity and safety, and (d) harmful materials
22 will not enter the public water system. The director may require,
23 by rule and regulation, that the applicant for a certificate of
24 competency successfully pass an examination on the subject of
25 operation of a public water system. The rules and regulations, and
26 any tests so administered, may set out different requirements for
27 ~~different sizes of~~ public water systems based on one or more of the
28 following: Physical size of the facilities, number of persons

1 served, system classification, source of water, treatment technique
2 and purpose, and distribution complexity, so long as the criteria
3 set forth in this section are followed.

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

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

24 Sec. 8. Original sections 46-606, 46-1233.01, 71-5301,
25 71-5303, 71-5304, and 71-5309, Revised Statutes Supplement, 2002,
26 are repealed.