

2008

STATE OF NEBRASKA

**STATUTES RELATING TO
NEBRASKA SAFE DRINKING WATER ACT**



Department of Health and Human Services
Division of Public Health
Licensure Unit

301 Centennial Mall South, Third Floor
PO Box 94986
Lincoln, NE 68509-4986

STATUTE INDEX

NEBRASKA SAFE DRINKING WATER ACT

- 71-5301. Terms, defined.
- 71-5301.01. Pipe, pipe fitting, solder, or flux; lead free; requirements; inspection.
- 71-5302. Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system.
- 71-5303. Public water system; permit; director; powers; hearing; appeal.
- 71-5304. Rules and regulations; construction and operation of system; objectives.
- 71-5304.01. Violations; administrative orders; director; emergency powers; hearing; administrative penalties.
- 71-5304.02. Public water system; notice; requirements.
- 71-5305. Public water system; construction, extension, or alteration; written authorization required; exception; procedure.
- 71-5305.01. Certain new water systems; technical, managerial, and financial capacity.
- 71-5305.02. Capacity development strategy; department; solicit public comment.
- 71-5306. Director; powers and authority; Safe Drinking Water Act Cash Fund; created; use; investment.
- 71-5307. Operator of public water system; certificate of competency required.
- 71-5308. Certificate of competency; application; issuance; term; investigation.
- 71-5309. Qualifications of operators of public water system; certificate; disciplinary actions; hearing; appeal.
- 71-5310. Director; authorize variances or exemptions to standards; procedure.
- 71-5310.01. Notice, order, or other instrument; service.
- 71-5311. Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses.
- 71-5311.01. Compliance not dependent on funding.
- 71-5311.02. Voluntary compliance.
- 71-5312. Violations; penalty; county attorney or Attorney General; action to assure compliance.
- 71-5313. Act, how cited.

STATUTES PERTAINING TO THE NEBRASKA SAFE DRINKING WATER ACT

71-5301. Terms, defined. 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) Department means the Division of Public Health of the Department of Health and Human Services;
- (3) Director means the Director of Public Health of the Division of Public Health or his or her authorized representative;
- (4) 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 has consummated a legal and binding contract covering specifically delegated responsibilities;
- (5) 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;
- (6) 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;
- (7) Owner means any person owning or operating a public water system;
- (8) Person means any individual, firm, partnership, limited liability company, association, company, corporation, political subdivision, or other entity;
- (9) 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;
- (10)(a) Public water system means a system for providing the public with water for human consumption through pipes or 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 (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) 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.
 - (b) 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.
 - (c) Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (b)(ii) or (iii) of this subdivision;
- (11) 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, may have an adverse effect on the health of persons and (b) apply only to public water systems;
- (12) Lead free (a) when used with respect to solders and flux means solders and flux containing not more than two-tenths percent lead, (b) when used with respect to pipes and pipe fittings means pipes and pipe fittings containing not more than eight percent lead, and (c) when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion means fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) as such section existed on July 16, 2004;
- (13) 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;
- (14) Noncommunity water system means a public water system that is not a community water system;
- (15) 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;
- (16) Small system means a public water system that regularly serves less than ten thousand individuals; and
- (17) 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.

Source: Laws 1976, LB 821, § 1; Laws 1988, LB 383, § 1; Laws 1993, LB 121, § 441; Laws 1996, LB 1044, § 712; Laws 1997, LB 517, § 17; Laws 2001, LB 667, § 28; Laws 2003, LB 31, § 3; Laws 2004, LB 1005, § 98; Laws 2007, LB296, § 608; Laws 2007, LB463, § 1223. Operative date July 1, 2007.

71-5301.01. Pipe, pipe fitting, solder, or flux; lead free; requirements; inspection. (1) After July 1, 1988, any pipe,

pipe fitting, solder, or flux which is used in the installation or repair of any public water system shall be lead free.

(2) By July 1, 1988, the owner of any public water 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 system be lead free.

(3) The owner of any public water 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 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 system that are in existence and use on July 1, 1988.

Source: Laws 1988, LB 383, § 2; Laws 2001, LB 667, § 29. Operative date May 22, 2001.

71-5302. Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system. (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 systems shall not contain amounts of chemical, radiological, physical, or bacteriological material 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 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) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water 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 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.

(5) The director may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act, as such section existed on May 22, 2001.

(6) The director may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the director or the Department of Environmental Quality. In establishing the ranking system the director shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, as the act existed on May 22, 2001, and assistance to systems most in need based upon affordability criteria adopted by the director. This priority system shall be reviewed annually by the director.

Source: Laws 1976, LB 821, § 2; Laws 1988, LB 383, § 3; Laws 1997, LB 517, § 18; Laws 2001, LB 667, § 30; Laws 2007, LB296, § 609. Operative date July 1, 2007.

71-5303. Public water system; permit; director; powers; hearing; appeal. (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 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, revocation, or the placement on probation by the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 821, § 3; Laws 1988, LB 383, § 4; Laws 1988, LB 352, § 139; Laws 1996, LB 1044, § 713; Laws 2000, LB 1115, § 77; Laws 2001, LB 667, § 31; Laws 2003, LB 31, § 4; Laws 2007, LB296, § 610; Laws 2007,

71-5304. Rules and regulations; construction and operation of system; objectives. (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 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 objectives of this section are met.

Source: Laws 1976, LB 821, § 4; Laws 2001, LB 667, § 32; Laws 2003, LB 31, § 5. Operative date January 1, 2004.

71-5304.01. Violations; administrative orders; director; emergency powers; hearing; administrative penalties. (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 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 director under the Administrative Procedure Act.

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

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

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

Source: Laws 1988, LB 383, § 5; Laws 1996, LB 1044, § 714; Laws 1997, LB 517, § 19; Laws 2001, LB 667, § 33; Laws 2007, LB296, § 611. Operative date July 1, 2007.

71-5304.02. Public water system; notice; requirements. (1) The director may require a public water system to give notice to the persons served by the system and to the department 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 system to give notice to the persons served by the public water 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.

Source: Laws 1988, LB 383, § 6; Laws 1996, LB 1044, § 715; Laws 2001, LB 667, § 34; Laws 2007, LB296, § 612. Operative date July 1, 2007.

71-5305. Public water system; construction, extension, or alteration; written authorization required; exception; procedure. (1) No major construction, extension, or alteration of a public water system shall be commenced without written authorization from the director. No such authorization shall be needed in the case of minor repairs and matters of maintenance. No such authorization shall be granted unless plans and specifications, prepared by a professional engineer, and any additional information required by the department have been submitted to the department or its designated agent for review.

(2) Upon a finding that there has been compliance with the minimum sanitary requirements adopted pursuant to section 71-5304, authorization to proceed with construction shall be granted by the director or his or her designated agent. In issuing authorization for the development of new public water supply sources, consideration shall be given to the location and effects of other water supply systems and the location of points of discharge or disposal for solid and liquid wastes.

Source: Laws 1976, LB 821, § 5; Laws 1997, LB 622, § 109; Laws 2001, LB 667, § 35. Operative date May 22, 2001.

71-5305.01. Certain new water systems; technical, managerial, and financial capacity. All new community water systems and new nontransient noncommunity water systems commencing operation after October 1, 1999, shall demonstrate technical, managerial, and financial capacity to operate under the Nebraska Safe Drinking Water Act.

The director may adopt and promulgate rules and regulations to determine demonstration requirements for technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.

Source: Laws 1997, LB 517, § 20; Laws 2007, LB296, § 613. Operative date July 1, 2007.

71-5305.02. Capacity development strategy; department; solicit public comment. The department shall develop a capacity development strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity pursuant to section 71-5305.01. The department shall consider and solicit public comment on:

(1) The methods or criteria the department will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(2) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair capacity development;

(3) A description of how the department will:

(a) Assist public water systems in complying with the Nebraska Safe Drinking Water Act;

(b) Encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(c) Assist public water systems in the training and certification of operators; and

(4) A description of how the department will establish a baseline and measure improvements in capacity with respect to the act.

Source: Laws 1997, LB 517, § 21; Laws 2001, LB 667, § 36; Laws 2007, LB296, § 614; Laws 2007, LB463, § 1225. Operative date July 1, 2007.

71-5306. Director; powers and authority; Safe Drinking Water Act Cash Fund; created; use; investment. (1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services, Division of Public Health, Environmental Laboratory, or at any other certified laboratory which has entered into an agreement with the department therefor, and establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621;

(c) Certify laboratories performing tests on water that is intended for human consumption. The director may establish, through rules and regulations, standards for certification. Such standards may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results. Such standards shall be consistent with requirements for performing laboratory tests established by the federal Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees and fees for certifying other laboratories shall be established and collected to defray the cost of the inspections and certification as provided in sections 71-2619 to 71-2621;

(d) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(e) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(f) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(g) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the department may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(h) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2) All such fees collected by the department shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130; Laws 2007, LB296, § 615; Laws 2008, LB928, § 30. Operative date July 18, 2008.

71-5307. Operator of public water system; certificate of competency required. No public water system shall be issued or otherwise hold a permit to operate a public water system, granted by the department, unless its operator possesses a certificate of competency issued by the department.

Source: Laws 1976, LB 821, § 7; Laws 2001, LB 667, § 38. Operative date May 22, 2001.

71-5308. Certificate of competency; application; issuance; term; investigation. (1) Application for a certificate of competency to act as a certified operator of a public water system shall be made upon forms prepared by the director and shall contain such information as the director, by rule and regulation, deems necessary. If the applicant is an individual, the application shall include the applicant's social security number. The department shall establish and collect fees for certificates of competency as provided in section 71-162.

(2) Certificates of competency to act as certified operators of public water systems shall be issued by the department for the calendar years applied for and shall expire at midnight on December 31 of the third year. Certificates of competency may be renewed triennially upon application and completion of continuing competency requirements established by the department in rules and regulations. The requirements may include, but not be limited to, one or more of the continuing competency activities listed in section 71-161.09. The department shall notify each certificate holder at least ninety days before the expiration of the certificate by a letter addressed to him or her at his or her last place of residence as noted upon its records.

(3) The department shall, within thirty days after receipt of an application, make an investigation and, if found in compliance with regulations adopted pursuant to section 71-5309, shall issue a certificate of competency, valid until midnight of December 31 of the third year.

Source: Laws 1976, LB 821, § 8; Laws 1997, LB 752, § 190; Laws 2001, LB 667, § 39; Laws 2002, LB 1021, § 90; Laws 2003, LB 242, § 131. Operative date July 1, 2004.

71-5309. Qualifications of operators of public water system; certificate; disciplinary actions; hearing; appeal. (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 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.

Source: Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6. Operative date January 1, 2004.

71-5310. Director; authorize variances or exemptions to standards; procedure. (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 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 as the act existed on July 20, 2002.

(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 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 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 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 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.

Source: Laws 1976, LB 821, § 10; Laws 1988, LB 383, § 8; Laws 1996, LB 1044, § 717; Laws 2001, LB 667, § 41; Laws 2002, LB 1062, § 54; Laws 2007, LB296, § 616. Operative date July 1, 2007.

71-5310.01. Notice, order, or other instrument; service. 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, 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.

Source: Laws 1988, LB 383, § 9; Laws 1996, LB 1044, § 718; Laws 2007, LB296, § 617. Operative date July 1, 2007.

71-5311. Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses. (1) There is hereby established the Advisory Council on Public Water Supply which shall advise and assist the department in administering the Nebraska Safe Drinking Water Act.

(2) The council shall be composed of seven members appointed by the Governor, (a) one of whom shall be a professional engineer, (b) one of whom shall be a licensed physician, (c) two of whom shall be consumers of a public water system, (d)

two of whom shall be operators of a public water system who possess a certificate of competency issued by the department to operate a public water system. One such operator shall represent a system serving a population of five thousand or less, and one such operator shall represent a system serving a population of more than five thousand, and (e) one of whom shall be, at the time of appointment, (i) an individual who owns a public water system, (ii) a member of the governing board of a public or private corporation which owns a public water system, or (iii) in the case of a political subdivision which owns a public water system, a member of the subdivision's governing board or board of public works or similar board which oversees the operation of a public water system.

Any owner or operator of a public water system serving on the council on March 2, 1989, shall continue to serve until the term of such member expires. As his or her term expires, such owner or operator shall be replaced by a person qualified as prescribed in subdivisions (d) and (e) of this subsection respectively.

(3) All members shall be appointed for three-year terms. No member shall serve more than three consecutive three-year terms. Each member shall hold office until the expiration of his or her term or until a successor has been appointed. Any vacancy occurring in council membership, other than by expiration of term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

(4) The council shall meet not less than once each year. Special meetings of the council may be called by the director or upon the written request of any two members of the council explaining the reason for such meeting. The place of the meeting shall be set by the director. Such officers as the council deems necessary shall be elected every three years beginning with the first meeting in the year 1990. A majority of the members of the council shall constitute a quorum for the transaction of business. Representatives of the department shall attend each meeting. Every act of the majority of the members of the council shall be deemed to be the act of the council.

(5) No member of the council shall receive any compensation, but each member shall be entitled, while serving on the business of the council, to receive his or her travel and other necessary expenses while so serving away from his or her place of residence as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 821, § 11; Laws 1989, LB 344, § 32; Laws 1996, LB 1044, § 719; Laws 1997, LB 622, § 110; Laws 2001, LB 667, § 42; Laws 2007, LB296, § 618; Laws 2007, LB463, § 1229. Operative date July 1, 2007.

71-5311.01. Compliance not dependent on funding. The failure or inability of any public water system to receive funds under the Drinking Water State Revolving Fund Act or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with the Nebraska Safe Drinking Water Act and rules and regulations adopted and promulgated under the act.

Source: Laws 1997, LB 517, § 22; Laws 2001, LB 667, § 43. Operative date May 22, 2001.

71-5311.02. Voluntary compliance. The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

Source: Laws 1997, LB 517, § 23; Laws 2007, LB296, § 619. Operative date July 1, 2007.

71-5312. Violations; penalty; county attorney or Attorney General; action to assure compliance. Any person who shall violate any of the provisions of sections 71-5301 to 71-5313 shall be guilty of a Class IV misdemeanor and each day shall constitute a separate offense in cases of continued violation. It shall be the duty of the county attorney or the Attorney General, to whom the director reports a violation, to cause appropriate proceedings to be instituted without delay to assure compliance with sections 71-5301 to 71-5313.

Source: Laws 1976, LB 821, §12; Laws 1977, LB 41, §62.

71-5313. Act, how cited. Sections 71-5301 to 71-5313 shall be known and may be cited as the Nebraska Safe Drinking Water Act.

Source: Laws 1976, LB 821, §13; Laws 1988, LB 383, §10; Laws 1997, LB 517, §24. Effective date June 12, 1997.