

Operator Certification

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In the spring of 2004, Section 8 of Title 179 was replaced by chapters 21 and 22 dealing with the operation and maintenance of public water systems. Chapter 21 deals with Transient water systems while Chapter 22 covers community and non-transient, non-community systems. Public hearings were held on these regulatory changes, and they were well attended by water operators from across the state. At the same time these changes were made, the state legislature passed LB 242, which changed credentialing and fee provisions for health professions and occupations. The passage of this bill required Chapter 10 of Title 179 to be amended to include the new fees for water operator certification. There were some other changes made in Chapter 10 that slipped under the radar of most operators due to the attention being given to Chapters 21 and 22.

One of the additions is the definition of probation that was added in Section 10-002 and is as follows:

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.

This definition comes into play in Section 10-007, where it has been added as a course of action the Director may take against the certificate of a water operator for due cause.

Section 10-003 was not changed, and one paragraph of that section reads as follows:

10-003.02 All operating personnel for community or non-transient non-community water systems that make process control or system integrity decisions about water quality or quantity that affect public health are required to hold a certificate of at least Grade IV.

Section 10-009 describes the administrative penalty that could be assessed against a water operator for violating Section 10-003.2, and defines what will be considered as evidence that this section was violated. Section 10-009 reads as follows:

10-009 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person has made process control or system integrity decisions about water quality or quantity that affect public health for community or non-transient non-community water systems without holding a certificate of at least Grade IV. Making process control or system integrity decisions without a certificate for the purpose of 179 NAC 10 means making process control or system integrity decisions:

1. Prior to the issuance of a certificate;
2. Following the expiration of a certificate; or
3. Prior to the reinstatement of a certificate.

10-009.01 Evidence of Making Process Control Or System Integrity Decisions: The Department will consider any of the following conditions as prima facie evidence of making process control or system integrity decisions without a certificate:

1. The person admits to making process control or system integrity decisions;
2. Staffing records or other reports from the employer of the person indicate that the person made process control or system integrity decisions; and
3. Government records indicate the person made process control or system integrity decisions.

For purposes of 179 NAC 10, prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

10-009.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for making process control or system integrity decisions without a certificate. To assess such penalty the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.
 - f.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

10-009.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.

In addition to these additions, there were several fees added to the regulations. A late fee of \$25.00 was added that allows a grace period of 30 days to an operator who let his certificate expire. This will allow an operator until January 30th of the following year to submit the application for renewal with the required renewal fee. This does not give the operator any extra time to receive continuing education hours for his renewal, as these must still be obtained by December 31st. There are several miscellaneous fees relating to verification of certification. To certify the status of certification costs \$25.00, while merely verifying the status is only \$5.00. To receive a duplicate certificate, the cost is \$10.00.

Another fee charged is an Administrative fee of \$25.00 for any denied application or a withdrawn application. Since this regulation change took place, an applicant for certification has to submit the

certification fee prior to having the exam for the grade of certification being applied for corrected and the results submitted to the applicant. Section 10.008.03 reads as follows:

10-008.03 Training Course Fee: Each applicant must submit a fee \$40 for each day of a scheduled basic training course delivered by the Department with each application for enrollment in a course that terminates with a written examination qualifying the attendee to apply for a certificate of competency.

It seems to me that this indicates that an applicant is not qualified to apply for a certificate until he has passed the examination required for that certificate. If this is true, then the application fee should not need to be submitted until after the successful completion of the qualifying exam has been verified to the applicant.

Operators with access to the web can now track continuing education on the Internet. The address for this site is <http://www.nebraska.gov/LISSearch/search.cgi>, and this site will allow you to check on any certificate that was issued by the Health and Human Services System.

The main thing all water operators need to do is be aware of the expiration date of their certification and submit the application and required recertification fee in a timely manner. This will insure that you will be able to continue uninterrupted as a certified water operator of the grade you currently hold.