

## Chapter 4 Safe Drinking Water Act

### **19-4-101 Short title.**

This chapter is known as the "Safe Drinking Water Act."

Renumbered and Amended by Chapter 112, 1991 General Session

### **19-4-102 Definitions.**

As used in this chapter:

- (1) "Board" means the Drinking Water Board appointed under Section 19-4-103.
- (2) "Contaminant" means a physical, chemical, biological, or radiological substance or matter in water.
- (3) "Director" means the director of the Division of Drinking Water.
- (4) "Division" means the Division of Drinking Water, created in Subsection 19-1-105(1)(b).
- (5)
  - (a) "Groundwater source" means an underground opening from or through which groundwater flows or is pumped from a subsurface water-bearing formation.
  - (b) "Groundwater source" includes:
    - (i) a well;
    - (ii) a spring;
    - (iii) a tunnel; or
    - (iv) an adit.
- (6) "Maximum contaminant level" means the maximum permissible level of a contaminant in water that is delivered to a user of a public water system.
- (7)
  - (a) "Public water system" means a system providing water for human consumption and other domestic uses that:
    - (i) has at least 15 service connections; or
    - (ii) serves an average of 25 individuals daily for at least 60 days of the year.
  - (b) "Public water system" includes:
    - (i) a collection, treatment, storage, or distribution facility under the control of the operator and used primarily in connection with the system; and
    - (ii) a collection, pretreatment, or storage facility used primarily in connection with the system but not under the operator's control.
- (8) "Retail water supplier" means a person that:
  - (a) supplies water for human consumption and other domestic uses to an end user; and
  - (b) has more than 500 service connections.
- (9) "Supplier" means a person who owns or operates a public water system.
- (10) "Wholesale water supplier" means a person that provides most of that person's water to a retail water supplier.

Amended by Chapter 360, 2012 General Session

### **19-4-103 Drinking Water Board -- Members -- Organization -- Meetings -- Per diem and expenses.**

- (1) The board consists of the following nine members:

- (a) the following non-voting member, except that the member may vote to break a tie vote between the voting members:
  - (i) the executive director; or
  - (ii) an employee of the department designated by the executive director; and
- (b) the following eight voting members, who shall be appointed by the governor with the consent of the Senate:
  - (i) one representative who is a Utah-licensed professional engineer with expertise in civil or sanitary engineering;
  - (ii) two representatives who are elected officials from a municipal government that is involved in the management or operation of a public water system;
  - (iii) one representative from an improvement district, a water conservancy district, or a metropolitan water district;
  - (iv) one representative from an entity that manages or operates a public water system;
  - (v) one representative from:
    - (A) the state water research community; or
    - (B) an institution of higher education that has comparable expertise in water research to the state water research community;
  - (vi) one representative from the public who represents:
    - (A) an environmental nongovernmental organization; or
    - (B) a nongovernmental organization that represents community interests and does not represent industry interests; and
  - (vii) one representative from the public who is trained and experienced in public health.
- (2) A member of the board shall:
  - (a) be knowledgeable about drinking water and public water systems, as evidenced by a professional degree, a professional accreditation, or documented experience;
  - (b) represent different geographical areas within the state insofar as practicable;
  - (c) be a resident of Utah;
  - (d) attend board meetings in accordance with the attendance rules made by the department under Subsection 19-1-201(1)(d)(i)(A); and
  - (e) comply with all applicable statutes, rules, and policies, including the conflict of interest rules made by the department under Subsection 19-1-201(1)(d)(i)(B).
- (3) No more than five appointed members of the board shall be from the same political party.
- (4)
  - (a) As terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that half of the appointed board is appointed every two years.
  - (c)
    - (i) Notwithstanding Subsection (4)(a), the term of a board member who is appointed before May 1, 2013, shall expire on April 30, 2013.
    - (ii) On May 1, 2013, the governor shall appoint or reappoint board members in accordance with this section.
- (5) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (6) Each member holds office until the expiration of the member's term, and until a successor is appointed, but not for more than 90 days after the expiration of the term.
- (7) The board shall elect annually a chair and a vice chair from its members.

- (8)
  - (a) The board shall meet at least quarterly.
  - (b) Special meetings may be called by the chair upon the chair's own initiative, upon the request of the director, or upon the request of three members of the board.
  - (c) Reasonable notice shall be given to each member of the board before any meeting.
- (9) Five members constitute a quorum at any meeting and the action of the majority of the members present is the action of the board.
- (10) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 360, 2012 General Session

**19-4-104 Powers of board.**

- (1)
  - (a) The board may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
    - (i) establishing standards that prescribe the maximum contaminant levels in any public water system and provide for monitoring, record-keeping, and reporting of water quality related matters;
    - (ii) governing design, construction, operation, and maintenance of public water systems;
    - (iii) granting variances and exemptions to the requirements established under this chapter that are not less stringent than those allowed under federal law;
    - (iv) protecting watersheds and water sources used for public water systems; and
    - (v) governing capacity development in compliance with Section 1420 of the federal Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq.;
  - (b) The board may:
    - (i) order the director to:
      - (A) issue orders necessary to enforce the provisions of this chapter;
      - (B) enforce the orders by appropriate administrative and judicial proceedings; or
      - (C) institute judicial proceedings to secure compliance with this chapter;
    - (ii)
      - (A) hold a hearing that is not an adjudicative proceeding relating to the administration of this chapter; or
      - (B) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding; or
    - (iii) request and accept financial assistance from other public agencies, private entities, and the federal government to carry out the purposes of this chapter.
  - (c) The board shall:
    - (i) require the submission to the director of plans and specifications for construction of, substantial addition to, or alteration of public water systems for review and approval by the board before that action begins and require any modifications or impose any conditions that may be necessary to carry out the purposes of this chapter;
    - (ii) advise, consult, cooperate with, provide technical assistance to, and enter into agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies, municipalities, local health departments, educational institutions, and others necessary

- to carry out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of local jurisdictions;
- (iii) develop and implement an emergency plan to protect the public when declining drinking water quality or quantity creates a serious health risk and issue emergency orders if a health risk is imminent;
  - (iv) require a certified operator of a public water supplier to verify by signature and certification number, or a professional engineer performing the duties of a certified water operator to verify by signature and stamp, the accuracy of any data on water use and water supply submitted by the public water supplier to the division; and
  - (v) meet the requirements of federal law related or pertaining to drinking water.
- (2)
- (a) The board may adopt and enforce standards and establish fees for certification of operators of any public water system.
  - (b) The board may not require certification of operators for a water system serving a population of 800 or less except:
    - (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq.; and
    - (ii) for a system that is required to treat its drinking water.
  - (c) The certification program shall be funded from certification and renewal fees.
- (3) Routine extensions or repairs of existing public water systems that comply with the rules and do not alter the system's ability to provide an adequate supply of water are exempt from the provisions of Subsection (1)(c)(i).
- (4)
- (a) The board may adopt and enforce standards and establish fees for certification of persons engaged in administering cross connection control programs or backflow prevention assembly training, repair, and maintenance testing.
  - (b) The certification program shall be funded from certification and renewal fees.
- (5) A board member may not speak or act for the board unless the board member is authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

Amended by Chapter 58, 2016 General Session

**19-4-105 Rulemaking authority and procedure.**

- (1) Except as provided in Subsection (2), no rule which the board makes for the purpose of the state administering a program under the federal Safe Drinking Water Act may be more stringent than the corresponding federal regulations which address the same circumstances. In making the rules, the board may incorporate by reference corresponding federal regulations.
- (2) The board may make rules more stringent than corresponding federal regulations for the purpose described in Subsection (1), only if it makes a written finding after public comment and hearing, and based on evidence in the record, that the corresponding federal regulation is not adequate to protect public health and the environment of the state. Those findings shall be accompanied by an opinion referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the board's conclusion.

Renumbered and Amended by Chapter 112, 1991 General Session

**19-4-106 Director -- Appointment -- Authority.**

- (1) The executive director shall appoint the director. The director shall serve under the administrative direction of the executive director.
- (2) The director shall:
  - (a) develop programs to promote and protect the quality of the public drinking water supplies of the state;
  - (b) advise, consult, and cooperate with other agencies of this and other states, the federal government, and with other groups, political subdivisions, and industries in furtherance of the purpose of this chapter;
  - (c) review plans, specifications, and other data pertinent to proposed or expanded water supply systems to ensure proper design and construction; and
  - (d) subject to the provisions of this chapter, enforce rules made by the board through the issuance of orders which may be subsequently revoked, which rules may require:
    - (i) discontinuance of use of unsatisfactory sources of drinking water;
    - (ii) suppliers to notify the public concerning the need to boil water; or
    - (iii) suppliers in accordance with existing rules, to take remedial actions necessary to protect or improve an existing water system; and
  - (e) as authorized by the board and subject to the provisions of this chapter, act as executive secretary of the board under the direction of the chairman of the board.
- (3) The director may authorize employees or agents of the department, after reasonable notice and presentation of credentials, to enter any part of a public water system at reasonable times to inspect the facilities and water quality records required by board rules, conduct sanitary surveys, take samples, and investigate the standard of operation and service delivered by public water systems.

Amended by Chapter 360, 2012 General Session

**19-4-107 Notice of violation of rule or order -- Action by attorney general.**

- (1) Upon discovery of any violation of a rule or order of the board, the board or the director shall promptly notify the supplier of the violation, state the nature of the violation, and issue an order requiring correction of that violation or the filing of a request for variance or exemption by a specific date.
- (2) The attorney general shall, upon request of the director, commence an action for an injunction or other relief relative to the order.

Amended by Chapter 360, 2012 General Session

**19-4-108 Supplier -- Variance or exemption -- Failure to comply -- Violation of chapter -- Public notice.**

When a supplier has a variance or exemption granted, has failed to comply with the terms of a variance or exemption, or has been finally determined to have committed a violation of this chapter, the supplier shall provide public notice of that fact as provided by the rules of the board.

Renumbered and Amended by Chapter 112, 1991 General Session

**19-4-109 Violations -- Penalties -- Reimbursement for expenses.**

- (1) Any person that violates any rule or order made or issued pursuant to this chapter is subject to a civil penalty of not more than \$1,000 per day for each day of violation. The board may assess

and make a demand for payment of a penalty under this section by directing the director to issue a notice of agency action under Title 63G, Chapter 4, Administrative Procedures Act.

- (2)
  - (a) Any person that willfully violates any rule or order made or issued pursuant to this chapter, or that willfully fails to take any corrective action required by such an order, is guilty of a class B misdemeanor and subject to a fine of not more than \$5,000 per day for each day of violation.
  - (b) In addition, the person is subject, in a civil proceeding, to a penalty of not more than \$5,000 per day for each day of violation.
- (3)
  - (a) Except as provided in Subsection (3)(b), all penalties assessed and collected under the authority of this section shall be deposited in the General Fund.
  - (b) The department may reimburse itself and local governments from money collected from civil penalties for extraordinary expenses incurred in environmental enforcement activities.
  - (c) The department shall regulate reimbursements by making rules that:
    - (i) define qualifying environmental enforcement activities; and
    - (ii) define qualifying extraordinary expenses.

Amended by Chapter 360, 2012 General Session

#### **19-4-110 Local jurisdiction over water supply systems.**

Nothing in this chapter alters the authority of local jurisdictions to control water supply systems within the local jurisdiction provided that any local laws, ordinances, or rules and regulations are not inconsistent with this chapter and rules made under authority of this chapter.

Renumbered and Amended by Chapter 112, 1991 General Session

#### **19-4-111 Fluoride added to or removed from water -- Election or shareholder vote required.**

- (1) As used in this section:
  - (a) "Corporate public water system" means a public water system that is owned by a corporation engaged in distributing water only to its shareholders.
  - (b) "Corporation" is as defined in Section 16-4-102.
  - (c) "Fluoride" means a chemical compound that contains the fluoride ion and is used to fluoridate drinking water, including:
    - (i) fluorosilicic acid;
    - (ii) sodium fluorosilicate; or
    - (iii) sodium fluoride.
  - (d) "Fluoride supplier" means a person who:
    - (i) manufactures, distributes, or packages or repackages fluoride;
    - (ii) is NSF/ANSI Standard 60 certified;
    - (iii) has evidence of the person's NSF/ANSI Standard 60 certification displayed on the website of a certification body accredited by the International Accreditation Forum, including:
      - (A) NSF;
      - (B) the Underwriter Laboratory; or
      - (C) the Water Quality Association; and
    - (iv) provides fluoride in compliance with applicable NSF/ANSI Standard 60 certification requirements.
  - (e) "Removal" means ceasing to add fluoride to a public water supply, the addition having been previously approved by the voters of a political subdivision.

- (2)
  - (a) Except as provided in Subsection (7) or Subsection 19-4-104(1)(a)(i), public water supplies, whether state, county, municipal, or district, may not have fluoride added to or removed from the water supply without the approval of a majority of voters in an election in the area affected.
  - (b) An election shall be held:
    - (i) upon the filing of an initiative petition requesting the action in accordance with state law governing initiative petitions;
    - (ii) in the case of a municipal, local district, special service district, or county water system that is functionally separate from any other water system, upon the passage of a resolution by the legislative body or local district or special service district board representing the affected voters, submitting the question to the affected voters at a municipal general election; or
    - (iii) in a county of the first or second class, upon the passage of a resolution by the county legislative body to place an opinion question relating to all public water systems within the county, except as provided in Subsection (3), on the ballot at a general election.
- (3) If a majority of voters on an opinion question under Subsection (2)(b)(iii) approve the addition of fluoride to or the removal of fluoride from the public water supplies within the county, the local health departments shall require the addition of fluoride to or the removal of fluoride from all public water supplies within that county other than those systems:
  - (a) that are functionally separate from any other public water systems in that county; and
  - (b) where a majority of the voters served by the public water system voted against the addition or removal of fluoride on the opinion question under Subsection (2)(b)(iii).
- (4) Nothing contained in this section prohibits the addition of chlorine or other water purifying agents.
- (5) Any political subdivision that, prior to November 2, 1976, decided to and was adding fluoride to the drinking water is considered to have complied with Subsection (2).
- (6) In an election held pursuant to Subsection (2)(b)(i), (ii), or (iii), where a majority of the voters approve the addition of fluoride to or the removal of fluoride from the public water supplies, no election to consider adding fluoride to or removing fluoride from the public water supplies shall be held for a period of four years from the date of approval by the majority of voters beginning with elections held in November 2000.
- (7)
  - (a) A supplier may not add fluoride to or remove fluoride from a corporate public water system unless the majority of the votes cast by the shareholders of the corporate public water system authorize the supplier to add or remove the fluoride.
  - (b) If a corporate public water system's shareholders do not vote to add fluoride under Subsection (7)(a), the supplier shall annually provide notice to a person who receives water from the corporate public water system of the average amount of fluoride in the water.
  - (c) A vote of the corporate public water system's shareholders under Subsection (7)(a) does not require a supplier of another public water system, including a public water system that provides water to the corporate public water system, to add fluoride to or remove fluoride from the public water system.
- (8) If a local health department requires a public water system to add fluoride to public drinking water supplies under Subsection (3), the public water system shall fluoridate the public drinking water supplies with fluoride manufactured, distributed, packaged, and, if applicable, repackaged by a fluoride supplier who has provided copies of the original, dated documents used to obtain and maintain NSF/ANSI Standard 60 certification to:
  - (a) the local health department that oversees the public water system; and

- (b) the division.
- (9) A public water system described in Subsection (8) shall obtain, for each quantity of fluoride acquired to fluoridate public drinking water supplies, a batch-specific certificate of analysis that represents the complete composition of the formulation of the undiluted raw fluoride substance, in percent or parts by weight, for each chemical and contaminant in the batch.
- (10) A local health department shall:
  - (a) order the temporary removal of fluoride from a public water system within the boundaries of the local health department if the public water system:
    - (i) violates Subsection (8) or (9); or
    - (ii) is unable to fluoridate public drinking water supplies in accordance with Subsections (8) and (9); and
  - (b) review and maintain the certification documents submitted to the local health department under Subsection (8).
- (11) A public water system described in Subsection (8) shall:
  - (a) review and maintain certificates of analysis obtained under Subsection (9); and
  - (b) upon request of a member of the public, provide a copy of a certificate of analysis obtained under Subsection (9) to the member of the public.
- (12) A local health department may order the temporary removal of fluoride from a public water system within the boundaries of the local health department if the public water system violates a provision of Subsection (11).
- (13) If a local health department orders the removal of fluoride from a public water system under Subsection (10)(a) or (12), the local health department shall:
  - (a) issue a public notice regarding the temporary removal of fluoride from the public water system; and
  - (b) when the public water system demonstrates its ability to fluoridate in accordance with Subsections (8), (9), and (11), revoke the removal requirement.
- (14) The division shall review and maintain the certification documents submitted to the division under Subsection (8).

Amended by Chapter 321, 2013 General Session

**19-4-111.1 Provision of fluoridated water -- Request of resident.**

A public water system in a county of the first or second class whose entire water inventory is fluoridated may supply water to a residence or business in a municipality that is located in two counties, one that has approved fluoridation and one that has not approved fluoridation in accordance with Section 19-4-111 if:

- (1) the owner requests that the public water system supply water to the residence or business;
- (2) no reasonable alternative water supply exists; and
- (3) the owner's request can be fulfilled without affecting other residences or businesses in the municipality or county that has not approved fluoridation.

Amended by Chapter 321, 2013 General Session

**19-4-111.2 Provision of fluoridated water -- Emergency circumstances.**

- (1) A public water system that is simultaneously supplying water to a municipality or county that approved fluoridation in accordance with Section 19-4-111 and a municipality or county that has not approved fluoridation may provide water from its fluoridated inventory to a municipality or county that has not approved fluoridation if:

- (a) as a result of a short-term emergency, the only water available is from the public water system's fluoridated inventory;
  - (b) the public water system ceases providing fluoridated water to the municipality or county that has not approved fluoridation in accordance with Section 19-4-111 in a time consistent with repair times following best industrial practice; and
  - (c) where feasible, provide prompt notice to the affected area.
- (2)
- (a) A resident of an affected area that does not wish to receive fluoridated water during an emergency may contact the public water system to have delivery of fluoridated water to their residence or business terminated.
  - (b) The resident shall determine when to resume delivery of water and shall contact the public water system to have delivery of water resumed.

Amended by Chapter 321, 2013 General Session

**19-4-112 Limit on authority of department and board to control irrigation facilities --  
Precautions relating to nonpotable water systems.**

- (1) Except as provided in this section and in Section 19-5-104, nothing contained in this chapter authorizes the department or board to:
  - (a) exercise administrative control over water used solely for irrigation purposes, whether conveyed in pipes, ditches, canals, or by other facilities; or
  - (b) adopt rules relating to the construction, operation, and maintenance of facilities for conveying irrigation water to the place of use.
- (2) Where nonpotable water is conveyed in pipelines under pressure in areas served by a potable water system, the following precautions shall be observed:
  - (a) a distinctive coloring or other marking on all exposed portions of the nonpotable system shall be used;
  - (b) potable and nonpotable water system service lines and extensions shall be completely separated and shall be installed in separate trenches;
  - (c) all hydrants and sprinkling system control valves shall be operated by a removable key so that it is not possible to turn on the hydrant or valve without a key;
  - (d) there shall be no cross connection between the potable and nonpotable water systems;
  - (e) the nonpotable system may not be extended into any building except greenhouses or other buildings for plant and animal production; and
  - (f) no connection in the nonpotable water system shall be made except by the persons responsible for its management.

Amended by Chapter 297, 2011 General Session

**19-4-113 Water source protection ordinance required.**

- (1)
  - (a) Before May 3, 2010, a first or second class county shall:
    - (i) adopt an ordinance in compliance with this section after:
      - (A) considering the rules established by the board to protect a watershed or water source used by a public water system;
      - (B) consulting with a wholesale water supplier or retail water supplier whose drinking water source is within the county's jurisdiction;
      - (C) considering the effect of the proposed ordinance on:

- (I) agriculture production within an agricultural protection area created under Title 17, Chapter 41, Agriculture and Industrial Protection Areas; and
- (II) a manufacturing, industrial, or mining operation within the county's jurisdiction; and
- (D) holding a public hearing in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and
- (ii) file a copy of the ordinance with the board.
- (b) A municipality in a first or second class county may adopt an ordinance that a first or second class county is required to adopt by this section by following the procedures and requirements of this section.
- (2)
  - (a) A county ordinance adopted in accordance with this section applies to the incorporated and unincorporated areas of the county unless a municipality adopts an ordinance in accordance with this section.
  - (b) A municipal ordinance adopted in accordance with this section supercedes, within the municipality's jurisdiction, a county ordinance adopted in accordance with this section.
- (3) An ordinance required or authorized by this section at a minimum shall:
  - (a) designate a drinking water source protection zone in accordance with Subsection (4) for a groundwater source that is:
    - (i) used by a public water system; and
    - (ii) located within the county's or municipality's jurisdiction;
  - (b) contain a zoning provision regulating the storage, handling, use, or production of a hazardous or toxic substance within a drinking water source protection zone designated under Subsection (3)(a); and
  - (c) authorize a retail water supplier or wholesale water supplier to seek enforcement of the ordinance provision required by Subsections (3)(a) and (b) in a district court located within the county or municipality if the county or municipality:
    - (i) notifies the retail water supplier or wholesale water supplier within 10 days of receiving notice of a violation of the ordinance that the county or municipality will not seek enforcement of the ordinance; or
    - (ii) does not seek enforcement within two days of a notice of violation of the ordinance when the violation may cause irreparable harm to the groundwater source.
- (4) A county shall designate a drinking water source protection zone required by Subsection (3)(a) within:
  - (a) a 100 foot radius from the groundwater source; and
  - (b) a 250 day groundwater time of travel to the groundwater source if the supplier calculates the time of travel in the public water system's drinking water source protection plan in accordance with board rules.
- (5) A zoning provision required by Subsection (3)(b) is not subject to Subsection 17-41-402(3).
- (6) An ordinance authorized by Section 10-8-15 supercedes an ordinance required or authorized by this section to the extent that the ordinances conflict.
- (7) The board shall:
  - (a) provide information, guidelines, and technical resources to a county or municipality preparing and implementing an ordinance in accordance with this section; and
  - (b) report to the Natural Resources, Agriculture, and Environment Interim Committee before November 30, 2010 on:
    - (i) compliance with this section's requirement to adopt an ordinance to protect a public drinking water source; and
    - (ii) the effectiveness of the ordinance in retaining state primacy in regulating drinking water.

Amended by Chapter 173, 2009 General Session