

## LEGISLATIVE BILL 939

Approved by the Governor May 26, 1971

Introduced by Loran Schmit, 23rd District; Willard H. Waldo, 31st District

AN ACT to adopt the Environmental Protection Act; to provide an operative date; to repeal sections 71-3001 to 71-3012, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, sections 28-1035 to 28-1039, sections 71-4101 to 71-4109, and sections 71-4501 to 71-4521, Revised Statutes Supplement, 1969; and to declare an emergency.

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

Section 1. Whereas the water, land and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state; and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be:

(1) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation and other productive, beneficial uses;

(2) To achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history; and to promulgate laws, rules and regulations and enforce uniformly the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water and land; and

(3) To cooperate with other states and the federal government to accomplish the objectives set forth in this act.

Sec. 2. As used in this act, unless the context otherwise requires:

(1) Air contaminant or air contamination shall mean the presence in the outdoor atmosphere of any dust,

fume, mist, smoke, vapor, gas, or other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere;

(2) Air pollution shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, or property or the conduct of business;

(3) Chairman shall mean the chairman of the Environmental Control Council, and council shall mean the Environmental Control Council;

(4) Complaint shall mean any charge, however informal, to or by the council, that any person or agency, private or public, is polluting the air or is violating the provisions of this act or any rule or regulation of the council in respect thereof;

(5) Control and controlling shall include prohibition and prohibiting as related to air pollution;

(6) Department shall mean the Department of Environmental Control, which department is hereby created;

(7) Director shall mean the Director of Environmental Control, which position is hereby established;

(8) Disposal system shall mean a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems and treatment works, disposal wells and fields, and other systems;

(9) Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof;

(10) Person shall mean any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision or public agency, or any other legal entity except the Environmental Control Council;

(11) Rule or regulation shall mean any rule or regulation of the council;

(12) Sewerage system shall mean pipe lines, conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(13) Treatment works shall mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes;

(14) Wastes shall mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state;

(15) Refuse shall mean putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings and solid market and industrial wastes;

(16) Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables, and dead animals rejected by rendering plants;

(17) Rubbish shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety;

(18) Junk shall mean old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material;

(19) Land pollution shall mean the presence upon or within the land resources of the state of one or more contaminants or combinations thereof, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to create a nuisance; to be harmful, detrimental or injurious to public health, safety or welfare; to be injurious to plant and animal life and property; to be detrimental to the economic and social development, the scenic beauty or the enjoyment of the natural attractions of the state;

(20) Water pollution shall mean contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or degrade the water from its intended use; and

(21) Waters of the state shall mean all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

Sec. 3. (1) The Environmental Control Council is hereby created. The council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows: One representative of the food products manufacturing industry, one representative of conservation, one representative of the agricultural processing industry, one representative of the automotive or petroleum industry, one representative of the chemical industry, one representative of heavy industry, one representative of the power generating industry, one representative of agriculture actively engaged in crop production, one representative of labor, one professional engineer experienced in control of air and water pollution and solid wastes, one physician knowledgeable in the health aspects of air, water and land pollution, one representative from county government, two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class, one representative of the livestock industry, and one representative of the public at large.

(2) Within thirty days after the effective date of this act, the Governor shall appoint the initial sixteen members to be appointed by him. Members shall serve for terms of four years, except that of the members first appointed, eight shall be appointed for

terms of two years and eight shall be appointed for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made, and shall be subject to reconfirmation by the Legislature after the appointee has served for two years. If the Legislature fails to reconfirm a member, the Governor shall appoint a successor for the balance of the term. When a vacancy occurs, appointment to fill the vacancy shall be made for the balance of the term. As the terms of the initial appointees to the council expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors shall be appointed to four-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. All members shall be citizens and residents of the State of Nebraska.

(3) Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording him an opportunity to be publicly heard in person, or by counsel, in his own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. When a member is removed, the Governor shall file, in the office of the Secretary of State, a complete statement of all charges made against such member and the findings thereon, together with a complete record of the proceedings.

(4) The council shall elect from its members a chairman, vice-chairman, and secretary who shall hold office at the pleasure of the council. The vice-chairman shall serve as chairman in case of the absence or disability of the chairman. The secretary shall keep all records of meetings of and actions taken by the council. He shall be promptly advised as to such actions by the chairman. He shall perform other duties as determined by the council, not inconsistent with the rules, regulations, and policies adopted by the council under the authority of this act or specific authority otherwise given by the council.

(5) The members of the council, while engaged in the performance of their official duties, shall receive compensation at the rate of forty dollars per day while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses on the same basis and subject to

the same conditions as full-time state employees.

(6) The council shall hold at least four meetings, once each calendar quarter at a time and place fixed by the council and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairman. Such special meetings must be called by him upon receipt of a written request signed by two or more members of the council. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the council by the secretary. The majority of the members of the council shall constitute a quorum.

(7) The council shall submit to the Governor a list of names from which he shall appoint the Director of Environmental Control experienced in air, water and land pollution control, and who may be otherwise an employee of the state government. The director shall exercise administrative supervision of air, water and land pollution control programs adopted by the council and in the interim between meetings of the council shall have authority to perform, in the name of the council, all functions and duties delegated to him by the council. The council may by resolution delegate any of the powers and duties vested in it by this act to the director, except the adoption and promulgation of standards, rules and regulations, the revocation of permits, and the issuance, modification, or revocation of orders except in cases of emergency as provided in this act.

(8) Before the director shall enter upon the duties of his office, he shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear and affirm that he holds no other public office nor any position under any political committee or party. Such oath and affirmation shall be filed with the Secretary of State.

(9) The department shall employ, compensate, and prescribe the powers and duties of such officers, employees, and consultants, in accordance with the laws of this state, as may be necessary to carry out the provisions of this act.

(10) The Governor's Keep Nebraska Beautiful Committee may be employed by the department for such special occasions and projects as the department may decide. Reimbursement of the Keep Nebraska Beautiful Committee shall be made from state and appropriate

federal matching funds for each assignment of work by the department.

(11) The department is hereby designated as the state air pollution and water pollution control agency for this state for all purposes of the Federal Air Quality Act of 1967 and the Federal Water Pollution Control Act, as amended (33 United States Code 466), and for the administration of all federal and state grants and incentives for environmental protection, and it is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of those acts.

Sec. 4. The department shall have and may exercise the following powers and duties:

(1) To exercise exclusive general supervision of the administration and enforcement of the provisions of this act and all rules and regulations and orders promulgated thereunder;

(2) To develop comprehensive programs for the prevention, control and abatement of new or existing pollution of the air, waters and land of the state;

(3) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this act;

(4) To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(5) To encourage, participate in, or conduct studies, investigations, research and demonstrations relating to air and water pollution and causes and effects, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this act, using its own members and staff or by using private research organizations under contract;

(6) To collect and disseminate information and conduct educational and training programs relating to air, water and land pollution and the prevention, control and abatement thereof;

(7) To adopt, modify or repeal and promulgate standards and criteria of quality of the air, waters and land of the state under such conditions as the council may prescribe for the prevention, control and abatement of pollution; Provided, that such standards or criteria and rules and regulations having the force and effect of standards and criteria shall not be more restrictive or stringent than standards or criteria promulgated or issued by any agency of the United States government pertaining to the same subject matter;

(8) To adopt, modify, repeal, and promulgate, after due notice and hearing, and to enforce, rules and regulations implementing or effectuating the powers and duties of the council under the provisions of this act and as the council may deem necessary to prevent, control, and abate existing or potential pollution;

(9) To issue, modify, or revoke orders: (a) Prohibiting or abating discharges of wastes into the air, waters or land of the state; (b) requiring the construction of new disposal systems or any parts thereof or the modification, extension of or the adoption of other remedial measures to prevent, control or abate pollution; and (c) setting standards of air and water quality or evidencing any other determination by the council under the provisions of this act;

(10) To administer state grants to municipalities and political subdivisions for the construction of sewage treatment works;

(11) To (a) hold such hearings and give notice thereof, (b) issue such subpoenas requiring the attendance of such witnesses and the production of such evidence, (c) administer such oaths, and (d) take such testimony as the council by resolution thereof deems necessary, and any of these powers may be exercised on behalf of the council by any member thereof or a hearing officer designated by resolution;

(12) To require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by this act;

(13) To issue, continue in effect, revoke, modify or deny permits, under such conditions as it may prescribe, to prevent, control or abate pollution, or for the discharge of wastes into the air or waters of the state, and for the installation, modification or



operation of disposal systems or any parts thereof;

(14) To require proper maintenance and operation of disposal systems;

(15) To exercise all incidental powers necessary to carry out the purposes of this act;

(16) To set up a bureau, division, or section of air pollution control and a bureau, division, or section of water pollution control to be administered by full-time salaried bureau, division or section chiefs, and to delegate and assign to each such bureau, division, or section and the officers and employees therein, any duties or powers granted to the council in this act, except the power to promulgate rules and regulations;

(17) To require access to existing and available records relating to emissions which cause or contribute to air contamination;

(18) To obtain such scientific, technical, administrative and operational services including laboratory facilities, by contract or otherwise, as the council deems necessary;

(19) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act;

(20) To encourage local units of government to handle air and water pollution problems within their respective jurisdictions and on a cooperative basis, and to provide technical and consultative assistance therefor;

(21) To consult, upon the request of any person proposing to construct, install or otherwise acquire an air or water contaminant source or device or system for control thereof, with such person concerning the efficacy of such device or system, or the air or water pollution problem which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this act, rules and regulations in force pursuant thereto, or any other provision of law;

(22) To require all persons engaged or desiring to engage in operations which result or which may result in air, water or land pollution to secure a permit prior to installation or operation or continued operation;

(23) To enter and inspect, during reasonable hours, any building or place, except a building designed for and used exclusively for a private residence;

(24) To receive or initiate complaints of air, water or land pollution, hold hearings in connection with air, water or land pollution and institute legal proceedings in the name of the state for the control or prevention of air, water or land pollution and for the recovery of penalties, in accordance with this act; and

(25) To delegate, by contract with governmental subdivisions which have adopted local air, water or land pollution control programs approved by the council, the enforcement of state-adopted air, water or land pollution control regulations within a specified region surrounding the jurisdictional area of the governmental subdivisions; Provided, prosecutions commenced under such contracts are conducted by the Attorney General or county attorneys as provided in this act.

Sec. 5. (1) In order to carry out the purposes of this act, the director shall adopt rules and regulations which shall set standards of air, water and land quality to be applicable to the air, waters and land of this state or portions thereof. Such standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. The council shall classify air, water and land contaminant sources according to levels and types of emissions and other characteristics which relate to air, water and land pollution, and may require reporting for any such class or classes. Such classifications and standards made pursuant to this subsection may be made for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air, water or land contaminant sources of any class for which the rules and regulations of the council require reporting shall make reports containing information as may be required by the council concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air, water or land

pollution and is available. Such standards and classifications may be amended from time to time as determined to be necessary by the council.

(3) Prior to adopting, amending, or repealing standards and classifications of air, water and land quality, the council shall, after due notice, conduct public hearings thereon. Notice of public hearings shall specify the waters or the area of the state for which standards of air, water or land are sought to be adopted, amended or repealed and the time, date and place of such hearing. Such hearing shall be held in the general area to be affected by such standards. Copies of such notice shall be:

(a) Published at least twice in a newspaper regularly published or circulated in a county or counties bordering or through which flow the waters or the atmosphere of which is affected, or the particular portion of land which is affected, for which standards are sought to be adopted. The first date of publication shall not be more than thirty days nor less than twenty days before the date fixed for such hearing; and

(b) Mailed at least twenty days before such hearing to such persons and political subdivisions as the council has reason to believe may be affected by the proposed standards.

(4) Standards of quality of the air, waters or land of the state or any amendment or repeal thereof shall become effective upon adoption by the council and filing in the office of the Secretary of State. In adopting standards of air, water and land quality or making any amendment thereof, the council shall specify a reasonable time for persons discharging wastes into the air, waters or land of the state to comply with such standards and upon the expiration of any such period of time shall revoke or modify any permit previously issued which authorizes the discharge of wastes into the air, waters or land of this state which result in reducing the quality of such air, waters or land below the standards established therefor by the council.

(5) All standards of quality of air, waters or land adopted pursuant to law prior to the effective date of this act and applicable to specified air, waters or land are hereby approved and adopted as standards of quality of such air, waters or land.

Sec. 6. (1) It shall be unlawful for any person:

(a) To cause pollution of any air, waters or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters or land of the state; or

(b) To discharge any wastes into any air, waters or land of the state which reduce the quality of such air, waters or land below the air, water or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance.

(2) It shall be unlawful for any person to carry on any of the following activities unless he holds a current permit therefor from the council, as is required by it, for the disposal of all wastes which are or may be discharged thereby into the air, waters or land of the state:

(a) The construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto;

(b) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(c) The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge of wastes into the air, waters or land of the state or would otherwise alter the physical, chemical or biological properties of any air, waters or land of the state in any manner not already lawfully authorized; or

(d) The construction or use of any new outlet for the discharge of any wastes into the air, waters or land of the state.

The council, under such conditions as it may prescribe, shall for the review, recommendations and written approval of the secretary of the council require the submission of such plans, specifications and other information as it deems necessary to carry out the provisions of this act or to carry out the rules and regulations adopted pursuant to the provisions of this act. Such plans and specifications shall be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska.

(3) If within thirty days of the receipt of plans, specifications or other information required pursuant to this section the council determines that the proposed construction, installation or establishment will not be in accordance with the requirements of this act or applicable rules and regulations, it shall issue a preliminary order prohibiting the construction, installation or establishment of the air, water or land contaminant source or sources. Failure of such an order to issue within the time prescribed in this subsection shall be deemed a determination that the construction, installation or establishment may proceed, if it is in accordance with the plans, specifications or other information, if any, required to be submitted.

(4) In addition to any other remedies available on account of the issuance of a preliminary order disapproving construction, installation, or establishment and prior to invoking any such remedies, the person aggrieved thereby shall, upon request and in accordance with rules of the council, be entitled to a hearing on the order. Following such hearing, the preliminary order may be affirmed, modified or withdrawn by a final order of the council which order shall be subject to review as provided in section 9 of this act.

(5) Nothing in this section shall be construed to authorize the council to specify the type, design, method of installation or type of construction of any equipment of manufacturing processes, or the kind or composition of fuels permitted to be sold, stored or used.

(6) Failure by the director to issue a rule, regulation or order pursuant to this section shall not relieve any person from compliance with any emission control requirements or with any other provision of law.

Sec. 7. (1) Whenever the director has reason to believe that a violation of any provision of this act or regulation or of any order of the department has occurred he may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision of the act or regulation or order alleged to be violated and the facts alleged to constitute a violation thereof, 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 each person named therein requests 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 alleged violator appear before the director at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (5) of this section not less than thirty days before the time set for the hearing.

(2) The director shall afford an opportunity for a fair hearing, in accordance with the provisions of this act, to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing the director shall make findings of fact and conclusions of law and enter such order as in his opinion will best further the purposes of this act and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with recommendations for findings of fact and conclusions of law to the director. The director, prior to entering his order on the basis of such record and recommendations, shall provide opportunity to the parties to submit for its consideration exceptions to the recommended findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the courts as provided in this act within thirty days after notice has been sent to the parties.

(3) Any person who is denied a permit by the director or who has such permit revoked or modified shall be afforded an opportunity for a fair hearing as provided in subsection (2) of this section in connection therewith upon written application to the director within thirty days after receipt of notice from the director of such denial, revocation or modification. On the basis of such hearing the director shall affirm, modify or revoke its previous determination.

(4) Whenever the council or in the interim between meetings of the council, the director finds that an emergency exists requiring immediate action to protect the public health and welfare, the council or in lieu thereof, the director, by direction of the council, may without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the council or the director, by direction of the council, deems necessary to meet the emergency. Notwithstanding the provisions of subsection

(2) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the council shall be afforded a hearing as soon as possible, and not later than ten days after such application by such affected person. On the basis of such hearing the council shall continue such order in effect, revoke it or modify it.

(5) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director may be served on any person affected thereby 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 last-known post office address as shown by the files or records of the department, and proof thereof may be made by the affidavit of the person who did the mailing, 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 therein stated, and a certified copy thereof shall have like force and effect.

(6) The hearings provided for in this section may be conducted by the director, or by any member of the department acting in his behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the council at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions in the district court. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under the provisions of this section, the district court shall have jurisdiction, upon application of the council or its representative, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony

presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court therefor, furnish a certified transcript of the whole or any part of the stenographer's notes to any party to the action requiring and requesting the same.

Sec. 8. (1) Any person who shall violate any of the provisions of this act, or who fails to perform any duty imposed by the provisions of this act or any regulation issued under this act or who violates any order or determination of the director promulgated pursuant to this act shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars and a further fine of ten dollars per day together with costs, for each day he violates the provisions of or fails to perform any of the duties imposed by this act, and in default of the payment of such fine and costs the person, and if such person is a corporation, then the officers of such corporation may be imprisoned in the county jail for a period of not more than sixty days, and in addition thereto may be enjoined from continuing such violation. Each day upon which such violation occurs shall constitute a separate violation.

(2) Any person who violates any of the provisions of this act or fails to perform any duty imposed by this act or any regulation issued under this act or who violates any order or determination of the director promulgated pursuant to this act, and causes the death of fish or other wildlife shall, in addition to the penalties provided in subsection (1) of this section, be liable to pay to the state an additional amount equal to the sum of money reasonably necessary to restock waters with fish or replenish such wildlife as determined by the director after consultation with the Game and Parks Commission. Such amount may be recovered by the director on behalf of the state in a civil action brought in the district court of the county wherein such violation or failure to perform any duty imposed by this act occurred.

(3) The director may bring an action for an injunction against any person violating the provisions of this act or violating any order or determination of the director. In any action for an injunction brought pursuant to this section, any finding of the director after hearing or due notice shall be prima facie evidence of the fact or facts found therein.



(4) Upon a showing by the Attorney General in behalf of the director that such person is violating or is about to violate the provisions of this act or is violating or is about to violate any order or determination of the director, an injunction shall be granted without the necessity of showing a lack of adequate remedy at law.

Sec. 9. (1) An appeal may be taken from any final order or other final determination of the director, by any person who is or may be adversely affected thereby, or by the Attorney General on behalf of the State of Nebraska, to the district court of the county affected thereby. Within thirty days after receipt of a copy of the order, or other final determination, or after service of notice thereof by certified or registered mail, the appellant or his attorney shall serve a notice of appeal on the agency through its executive secretary. During such thirty-day period the court may for good cause shown extend such time for not exceeding an additional sixty days. The notice of appeal shall refer to the action of the director appealed from and shall specify the grounds of appeal, including both points of law and fact which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten days of the service of the notice and thereupon the court shall have jurisdiction of the appeal. The service of such notice of appeal shall not act as a stay of enforcement of the director's final order or other final determination unless so ordered and directed by the court.

(2) The appellant and the director shall in all cases be deemed the original parties to an appeal. The state, through the Attorney General or any other person affected, may become a party by intervention as in a civil action upon showing cause therefor. No bond or deposit for costs shall be required of the state or department upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

(3) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules related to a trial in the nature of an appeal in equity of an administrative determination. All findings of fact by the director are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the director at the hearing.

In any appeal or other proceeding involving any order, or other determination of the director, the action of the director shall be prima facie reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with. A certified copy of the proceedings, together with all documents and papers on file and all testimony taken therein shall be certified to the district court in connection with each appeal. The certified copies of the director's findings and decisions shall be deemed its answer to the notice of appeal.

(4) The trial of the appeal before the district court shall be without a jury and shall be de novo. The court shall receive in evidence in any such case a certified transcript of the proceedings had before the director, together with a certified copy of the director's findings and decision, which findings and decision shall be evidence of the facts found therein and may receive such further evidence as the court in its discretion deems proper and necessary and shall have jurisdiction to enter such judgment and orders enforcing such judgment as may be proper and necessary. The record of the director filed in court shall be returned to the director after the final disposition of the case by the district court or the Supreme Court.

(5) The director or any party who may consider himself aggrieved by a judgment entered upon the appeal of any decision of the director may have such judgment reviewed by the Supreme Court in the same manner as is provided in civil cases. Upon the final determination of such judicial proceedings, the director shall enter an order on the mandate in accordance with such determination.

Sec. 10. (1) The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings pursuant to this section.

(2) Whenever the director has reason to believe that a violation of any provision of this act or rule or regulation pursuant thereto has occurred, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this act or rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than thirty

days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the director. Upon such request, the director shall hold a hearing. In lieu of an order, the director may require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(3) The director may require the maintenance of records relating to the operation of disposal systems, and any authorized representative of the director may examine and copy any such records or memoranda pertaining to the operation of disposal systems. Copies of such records shall be submitted to the director upon request.

Sec. 11. Any duly authorized officer, employee, or representative of the director may at any reasonable time, with the consent of the person or persons in control of an air or water contaminant source, enter and inspect any property, premise or place on or at which such an air contaminant source is located or being constructed, installed or established for the purpose of ascertaining the state of compliance with this act and rules and regulations in force pursuant thereto. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by the district court as provided by law to such officer, employee, or representative of the department, for the purpose of enabling him to make such inspection. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials and warrants; nor shall any person obstruct, hamper or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in acute and compelling emergency situations when there is neither sufficient time nor opportunity to obtain a search warrant. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Sec. 12. Nothing in this act shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

Sec. 13. (1) Any person who owns or is in control of any plant, building structure, process or equipment may apply to the director for a variance from rules or regulations. The director may grant such variance if it finds that the emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions involved including but not limited to:

(a) The character and degree of injury to or interference with the health and physical property of the people;

(b) The social and economic value of the source of the air pollution;

(c) The question of priority of location in the area involved; and

(d) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source.

(2) No variance shall be granted pursuant to this section except after public hearing on due notice and until the director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the director may prescribe;

(b) If the variance is granted on the ground that compliance with the particular requirement or

requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the council, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable; and

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivision (a) or (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the director on account of the variance, no renewal thereof shall be granted unless, following public hearing on the complaint on due notice, the director finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the director shall give public notice of such application in accordance with rules and regulations of the department.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the director. The granting or denial of a variance or a renewal shall be by final order of the director. Any person adversely affected by such an order may obtain judicial review thereof in accordance with the provisions of section 15 of this act; Provided, that such review shall be limited to the issue of whether the director exercised his discretion in an arbitrary or capricious manner.

(6) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of section 12 of this act to any person or his property.

Sec. 14. It is hereby declared to be the public policy of the State of Nebraska to achieve and maintain such a reasonable degree of purity of the land

resources of the state as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state, protect the scenic beauty of the state, facilitate the enjoyment of the natural attractions of the state, and to provide for the prevention, abatement and control of new or existing land pollution.

Sec. 15. The director may make, amend and repeal rules and regulations having the force and effect of law controlling and prohibiting land pollution, whether by private persons or agencies or by governmental agencies throughout the state or in such areas of the state as shall be affected thereby. Notwithstanding the terms of any other law applying to the adoption of rules and regulations, no such rule or regulation, amendment or repeal thereof shall be adopted, except after public hearing to be held after thirty days' prior notice thereof by public advertisement of the date, time and place of such hearing, at which opportunity to be heard, by the council, in respect thereof shall be given to the public. No such rules or regulations, amendment or repeal thereof, shall be or become effective until sixty days after the adoption thereof. Any person heard at such public hearing shall be given written notice of the action taken by the director in respect to such rule or regulation.

Sec. 16. No person shall dispose of any refuse, garbage or rubbish at any place, except a disposal area licensed as provided by this act. Nothing in this act nor any act of the director shall usurp the legal right of a local governing body to develop and enforce local ordinances, codes or rules and regulations on solid waste disposal equal to or more stringent than the provisions of this act, nor shall the provisions of this act relieve the applicant from obtaining a license from a local governing body when required or relieve the person owning or operating a disposal area from responsibility for securing proper zoning permits or complying with all applicable local ordinances, codes or rules and regulations not in conflict with the provisions of this act.

Sec. 17. (1) A person, partnership, corporation, governmental subdivision or agency thereof desiring a license to operate a disposal area shall make application therefor each year to the director on a form provided by the director.

(2) The application shall contain the name and residence of the applicant, the location of the proposed disposal area, and such other information as may be necessary. The application shall be accompanied by a fee of twenty-five dollars, except that governmental subdivisions and agencies thereof shall be exempt from payment of the fee.

Sec. 18. (1) Before the director shall approve a solid waste disposal area, it shall be approved by the county board of the county, if the area is outside the zoning jurisdiction of a city or village, or by the city council or board of trustees if within the zoning jurisdiction of a city or village. The director shall send a copy of the application to the county board, city director or board of trustees, advising them of the application filed with the council. A hearing shall be had by the county board, city council or board of trustees within thirty days from receipt of the copy of the application.

(2) Before the county board, city council or board of trustees shall approve such area, notice shall be given at least ten days before the hearing. Such notice shall be given by publication of the notice one time in a newspaper either published in or having general circulation in the county, city or village where the proposed area is to be located. A copy of the printed notice shall be mailed to the director at least five days before the hearing. The notice shall state the time and place of hearing, the name of the applicant for a license for such area and the exact location of the area. If the county board, city council, or board of trustees deems such an area suitable for a solid waste disposal area, such fact shall be certified to the director.

(3) Upon receipt of the application, the director or his designated representative shall inspect the proposed site and determine if the proposed operation complies with the provisions of this act and the rules and regulations adopted under this act and the ordinances of a city or village regulating the disposal of solid wastes, has been approved by the governmental subdivision where the area is to be located, and the director finds that the applicant is a responsible and suitable person to conduct the business, the secretary shall issue a license to the applicant upon filing by the applicant with the director of a performance bond in an amount equal to five hundred dollars per acre of disposal area, but not less than twenty-five hundred dollars; Provided, when the applicant is a county, city

or village, no bond shall be required.

Sec. 19. Licenses shall expire on October 1 following the date of issuance, but may be renewed upon payment of an annual fee of twenty-five dollars if the licensee has complied with the provisions of this act and the rules and regulations adopted under this act.

Sec. 20. The director may revoke a license, after reasonable notice and hearing, if it finds that the disposal area is not operated in accordance with the provisions of this act and the rules and regulations adopted under this act.

Sec. 21. The director shall promulgate rules and regulations after reasonable notice and hearings which shall contain sanitary standards for disposal areas and otherwise implement sections 14 to 22 of this act.

Sec. 22. Sections 14 to 22 of this act shall not prohibit a person from disposing of refuse from his own household upon his own land as long as such disposal does not create a nuisance or hazard to health.

Sec. 23. It shall be unlawful for any property owner or person in lawful possession of property to allow the accumulation of junk on property that is not purely agricultural in character to the extent that such accumulation is a potential hazard to health.

Sec. 24. The department of health of a city, or the director, as the case may be, shall have the power to investigate all complaints of violations of section 23 of this act and, if either the department or director finds that the property owner or person in lawful possession of the property has allowed an unlawful accumulation of junk, shall give notice to the owner or person in lawful possession of the property by certified or registered mail to remove the accumulation within thirty days.

Sec. 25. When any property owner or person in lawful possession of property fails or refuses to remove an accumulation of junk as directed by the director pursuant to section 24 of this act, the director shall request that the county attorney of the county in which the property is located or the Attorney General prosecute the property owner or person in lawful possession of the property for violation of the provisions of this act.



Sec. 26. (1) All rules and regulations adopted by the director and all hearings and other proceedings of the director, and judicial review thereof, shall be subject to the provisions of Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 12 of this act.

(3) Nothing in Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, shall be construed to render inapplicable or unenforceable the procedure set forth in section 7 of this act. In any case of inconsistency or conflict, the provisions of section 7 of this act shall prevail.

Sec. 27. Any records or other information furnished to or obtained by the council concerning one or more air, water or land contaminant sources, which records or information, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator, shall be only for the confidential use of the department in the administration of this act, unless such owner or operator shall expressly agree to their publication or availability to the general public. Nothing in this section shall be construed to prevent the use of such records or information by the council in compiling or publishing analyses or summaries relating to the general condition of water or the land or the outdoor atmosphere; Provided, that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

Sec. 28. (1) This act shall not apply in any political subdivision which provides for the control of air, water or land pollution by resolution, ordinance or regulation not inconsistent with the substantive provisions of this act or any rule or regulation adopted pursuant to this act; Provided, that no such resolution, ordinance or regulation shall become effective until a certificate of exemption has been issued by the director. Such certificate of exemption shall be available for inspection in the office of the county, city or village clerk as the case may be.

(2) If the council shall determine at any time after the issuance of such a certificate that a

resolution, ordinance or regulation is being enforced in a manner inconsistent with this act or any rule or regulation adopted pursuant to this act in any political subdivision holding a certificate of exemption, the director may suspend the certificate of exemption and this act shall apply in such political subdivision until such standards are met and a new certificate is issued.

(3) Any political subdivision desiring a certificate of exemption shall make application for such certificate by filing a petition for certificate of exemption with the director. The director or his designated representative shall promptly investigate such petition. If the recommendation of the director or his designated representative is against the granting of a certificate of exemption and he, in his discretion, concludes that a hearing would be advisable, a hearing shall be held as provided in section 7 of this act on the questions of whether the resolution, ordinance or regulation is consistent with the substantive provisions of this act or any rule or regulation adopted pursuant to this act, and whether adequate provisions have been made for enforcement. The burden of proof thereof shall be upon the political subdivision. A like hearing shall be held upon any proposed suspension of a certificate of exemption.

(4) If the director finds that the location, character or extent of particular concentrations of population, air, water or land contaminant sources, the geographic, topographic or meteorological considerations, or any combination thereof, are such as to make impracticable the maintenance of appropriate levels of air, water or land quality without an areawide air, water or land pollution control program, the director may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(5) Nothing in this act shall be construed to supersede or oust the jurisdiction of any local air, water or land pollution control program in operation on the effective date of this act; Provided, that within two years from such date any such program shall meet all requirements of this act for a local air, water or land pollution control program. Any approval required from the council shall be deemed granted unless the council takes specific action to the contrary.

Sec. 29. Nothing in this act shall be construed to:

(1) Grant to the department any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops or private property appurtenant thereto;

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution; or

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health or safety.

Sec. 30. (1) All reports, documents, surveys, books, records, files, papers or other writings in the possession of the Air Pollution Control Council, the Water Pollution Control Council, and the Department of Health, relating to the powers, duties and functions transferred by this act, shall be delivered to the custody of the director.

(2) All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed or used in carrying on the powers, duties and functions of the Air Pollution Control Council, the Water Pollution Control Council and the Department of Health, transferred by this act, shall be assigned and set over to the department.

(3) All funds, credits or other assets held in connection with the powers, duties and functions transferred by the provisions of this act shall be assigned to the department.

(4) All appropriations made to the Air Pollution Control Council, the Water Pollution Control Council and the Department of Health for the purpose of carrying out the powers, duties and functions transferred by this act shall be transferred and credited to the department for the purpose of carrying out such transferred powers, duties and functions, as of the effective date of the creation of the department.

(5) The department shall have, maintain and operate supportive services, such as, but not restricted to, laboratory and personnel therein, as necessary to carry on and execute the powers, duties and functions transferred by this act.

(6) The department shall succeed to and be vested with all the powers, duties and functions vested in the Water Pollution Control Council and the Air

Pollution Control Council or the executive secretaries or directors thereof, insofar as they are not inconsistent with the specific provisions of this act. The department shall succeed to and be vested with all the powers, duties and functions vested in the Department of Health relating to the prevention, abatement and control of all water, land and air pollution, including, but not limited to, that contributed to or caused by particulates, solid wastes, junk, refuse, garbage, rubbish, gasses, dust, vapor, noise, odor, nutrients and heated liquids, insofar as they are not inconsistent with the specific provisions of this act.

Sec. 31. The chief executive officer of the Department of Environmental Control shall be the Director of Environmental Control, who shall be appointed by the Governor from a list of names submitted by the Environmental Control Council with the advice and consent of the Legislature. The director shall administer the affairs of the department, and he shall serve at the pleasure of the Governor. The director shall have equal rank with the heads of other state departments, and his salary shall be fixed by the Governor. The director shall employ such assistants, professional staff and other employees as may be deemed necessary to effectively carry out the provisions of this act within such appropriations as the Legislature may provide.

Sec. 32. This act shall be cited as the Environmental Protection Act.

Sec. 33. If any section of this act, or any part of any section, shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 34. This act shall become operative on July 1, 1971.

Sec. 35. That sections 71-3001 to 71-3012, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, sections 28-1035 to 28-1039, sections 71-4101 to 71-4109, and sections 71-4501 to 71-4521, Revised Statutes Supplement, 1969, are repealed.

Sec. 36. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.