

## LEGISLATIVE BILL 342

Approved by the Governor April 17, 1979

Introduced by George, 16

AN ACT to amend sections 81-1504, 81-1505, and 81-1508, Reissue Revised Statutes of Nebraska, 1943, relating to the Environmental Protection Act; to correct citations; to provide powers and duties; to provide and change penalties; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 81-1504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1504. 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 sections 81-1501 to 81-1532 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 sections 81-1501 to 81-1532;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the federal ~~Water Pollution Control Act Amendments of 1972, 86 Stat. 846~~ Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the ~~Solid Waste Disposal Act, as amended, 42 U.S.C. 3251~~ Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection 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, land, 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 sections 81-1501 to 81-1532, using its own 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 issue, modify, or revoke orders: (a) Prohibiting or abating discharges of wastes into the air, waters or land of the state; and (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;

(8) To administer state grants to political subdivisions for the construction of sewage treatment works and facilities to dispose of water treatment plant wastes;

(9) 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 director deems necessary, and any of these powers may be exercised on behalf of the director by a hearing officer designated by him;

(10) 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 sections 81-1501 to 81-1532;

(11) To issue, continue in effect, revoke, modify or deny permits, under such conditions as the director may prescribe, consistent with the standards, rules and regulations adopted by the council, to prevent, control or abate pollution, or for the discharge of wastes into the air, land, or waters of the state, and for the installation, modification or operation of disposal systems or any parts thereof;

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

(13) To exercise all incidental powers necessary to carry out the purposes of sections 81-1501 to 81-1532;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, and solid wastes, 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, the duties and powers granted to the department for the enforcement of the provisions of Chapter 81, article 15, and the standards, rules and regulations adopted pursuant thereto;

(15) To require access to existing and available records relating to or monitoring of emissions or discharges which cause or contribute to air, land, or water pollution;

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

(17) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of sections 81-1501 to 81-1532;

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

(19) To consult, upon the request of any person proposing to construct, install or otherwise acquire an air, land, 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, land, 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 sections 81-1501 to 81-1532, rules and regulations in force pursuant thereto, or any other provision of law;

(20) 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;

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

(22) 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 sections 81-1501 to 81-1532;

(23) 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 sections 81-1501 to 81-1532;

(24) To conduct tests and take samples of air, water or land contaminants, fuel, process materials or any other substance which affects or may affect discharges or emissions of air, water or land contaminants from any source, giving the owner or operator a receipt for the sample obtained;

(25) To develop and enforce compliance schedules under such conditions as the director may prescribe, consistent with the standards, rules, and regulations adopted by the council, to prevent, control, or abate pollution; ~~Provided, that the council shall adopt no rules or regulations which are less stringent than those requirements defined by federal guidelines; and~~

(26) To employ the Governor's Keep Nebraska Beautiful Committee for such special occasions and projects as the department may decide and reimbursement of the committee shall be made from state and appropriate federal matching funds for each assignment of work by the department; r

(27) To require the owners or operators of a major new or modified stationary air pollution source under the Clean Air Act, as amended, 42 U.S.C. 1857 et seq, to pay a permit fee when the application therefor cannot be processed in a routine manner. Such fee shall not exceed the cost of the engineering review, any public hearings held, and any other nonroutine expenses in connection with the issuance or denial of such permit;

(28) To provide, to the extent determined by the council to be necessary and practicable, for area-wide, selective, and periodic inspection and testing of motor vehicles to secure compliance with applicable exhaust

emission standards for a fee not to exceed five dollars to offset the cost of inspection; and

(29) To enforce, when it is not feasible to prescribe or enforce any emission standard for control of air pollutants, the use of a design, equipment, a work practice, or an operational standard, or combination thereof, which is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety.

Sec. 2. That section 81-1505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1505. (1) In order to carry out the purposes of sections 81-1501 to 81-1532, the council 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. The council shall classify air, water and land contaminant sources according to levels and types of discharges, 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 section 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. Such standards and classifications may be amended as determined necessary by the council.

(2) In adopting the classifications of waters and water quality standards, the primary purpose for such standards shall be to protect the public health and welfare, and the council shall give consideration to: (a) The size, depth, surface or underground area covered, the volume, direction and rate of flow, stream gradient, and temperature of the water; (b) the character of the area affected by such classification or standards, its peculiar suitability for particular purposes, conserving the value of the area, and encouraging the most appropriate use of lands within such area for domestic, agricultural, industrial, or recreational and aquatic life purposes; (c) the uses which have been made, are being made, or are likely to be made, of such waters for agricultural, transportation, domestic and industrial consumption, for fishing and aquatic culture, for the disposal of sewage, industrial waste and other wastes, or other uses within this state and, at the discretion of

the council, any such uses in another state on interstate waters flowing through or originating in this state; and (d) the extent of present pollution or contamination of such waters which has already occurred or resulted from past discharges therein.

(3) In adopting effluent limitations or prohibitions the council shall give consideration to the type, class, or category of discharges, the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable or other waters of the state, including schedules of compliance, best practicable control technology, and best available control technology.

(4) In adopting standards of performance the council shall give consideration to the discharge of pollutants which reflect the greatest degree of effluent reduction which the council determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(5) In adopting toxic pollutant standards and limitations the council shall give consideration to the combinations of pollutants, the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms.

(6) In adopting pretreatment standards the council shall give consideration to the prohibitions or limitations to noncompatible pollutants, prohibitions against the passage through a publicly-owned treatment works of pollutants which would cause interference with or obstruction to the operation of publicly-owned treatment works, damage to such works, and the prevention of the discharge of pollutants therefrom which are inadequately treated.

(7) In adopting treatment standards the council shall give consideration to providing for processes to which wastewater shall be subjected in a publicly-owned wastewater treatment works in order to make such wastewater suitable for subsequent use.

(8) In adopting regulations pertaining to the disposal of domestic and industrial liquid wastes the council shall give consideration to the minimum amount of

biochemical oxygen demand, suspended solids, or equivalent in the case of industrial wastewaters, which must be removed from the wastewaters, the degree of disinfection necessary to meet water quality standards, the requirements of section 81-1506 (2) (c) and (3) with respect to installation, change, alterations in or additions to any wastewater treatment works, and requirements necessary for proper maintenance thereof.

(9) In adopting regulations to control the erection, modification, commencement, alteration, or operation of disposal wells to protect groundwater and other subsurface resources of the state, the council shall give consideration to the effects on water quality of groundwater, general conditions such as location, geologic formations, topography, industry, agriculture, population densities, wildlife, fish and other aquatic life, mineral and water resources, an evaluation of generalized geologic and hydrologic conditions, design specifications of the proposed well, the disposal system, an evaluation of the injection zone, specifications for surface equipment design and conditions under which abandonment of such a well will be allowed.

(10) In adopting livestock waste control regulations the council shall consider the discharge of livestock wastes into the waters of the state or onto land not owned by the livestock operator, conditions under which permits for such operations may be issued, including design, location, and proper management of such facilities, protection of groundwater from such operations, and revocation, modification, or suspension of such permits for cause.

(11) In adopting regulations for the issuance of permits under the National Pollutant Discharge Elimination System created by the ~~Federal Water Pollution Control Act Amendments of 1972~~, ~~Public Law 92-500~~ Federal Clean Water Act, 33 U.S.C. 1251 et seq., the council shall consider when such permits shall be required and exemptions, application and filing requirements, terms and conditions affecting such permits, notice and public participation, duration and review of such permits, and monitoring, recording, and reporting under the system.

(12) In adopting air pollution control regulations the council shall consider classification of air quality control regions, reporting of emissions, when permits shall be required for new and complex sources, limitations on emissions from existing process operations and existing fuel-burning equipment, incinerator emissions, and such other emissions restrictions as are necessary to protect the public health and welfare, when

exceptions will be allowed, establishment of time schedules for compliance, measurement of emissions, and provisions for emergency air episodes. The council shall also provide, to the extent it determines necessary and practicable, for area-wide, selective, and periodic inspection and testing of motor vehicles to insure compliance with applicable emission standards for a fee not to exceed five dollars to offset the increased cost of inspection, and the council may, when it is not feasible to prescribe or enforce an emission standard for control of air pollutants, adopt a design, equipment, work practice, or operational standard, or any combination thereof, which is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety. As part of such standard the council shall adopt such requirements as will assure the proper operation and maintenance of any element of design or equipment.

(13) In adopting regulations for solid waste disposal, the council shall consider storage, collection, transportation, processing, resource recovery, and disposal of solid wastes, development and operational plans for solid waste disposal areas, conditions for licensing of solid waste disposal areas, modification, suspension, or revocation of such licenses, regulations of operations thereof, including site improvements, fire prevention, safety, and restricted access, spreading, compacting and covering of solid wastes, handling of liquids and hazardous materials, insect and rodent control, salvage operations, and the methods of disposing of accumulations of junk outside of solid waste disposal areas.

(14) In adopting regulations governing discharges or emissions of oil and other hazardous materials into the waters, in the air, or upon the land of the state, the council shall consider methods for prevention of such discharges or emissions and the responsibility of the discharger or emitter for clean-up, toxicity, degradability, and dispersal characteristics of the substance.

(15) 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 department concerning quality and quantity of discharges and emissions, 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.

(16) 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.

(17) 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 may 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.

(18) All standards of quality of air, waters or land and all rules and regulations adopted pursuant to law by the council prior to April 13, 1974 and applicable to specified air, waters or land are hereby approved and adopted as standards of quality of and rules and regulations for such air, waters or land.

(19) In addition to such standards as are heretofore authorized, the council shall adopt rules and regulations to set standards of performance, effluent standards, pretreatment standards, treatment standards,

toxic pollutant standards and limitations, effluent limitations, effluent prohibitions, and quantitative limitations or concentrations which shall in all respects conform with and meet the requirements of the National Pollutant Discharge Elimination System in the ~~Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500~~ federal Clean Water Act, 33 U.S.C. 1251 et seq.

Sec. 3. That section 81-1508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1508. (1) Any person who shall violate any of the provisions of sections 81-1501 to 81-1532, or who fails to perform any duty imposed by the provisions of sections 81-1501 to 81-1532 shall:

(a) For any violation except of (i) a permit or permit condition or limitation pursuant to the National Pollutant Discharge Elimination System, ~~Public Law 92-500 created by the Clean Water Act, 33 U.S.C. 1251 et seq., or (ii) air pollution standards and regulations,~~ be guilty of a misdemeanor and 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 sections 81-1501 to 81-1532, 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;

(b) For willful or negligent violation of water quality standards, effluent standards and limitations, for failure to obtain a permit or meet the filing requirements therefor, discharging without a permit or for violation of a permit or any permit condition or limitation under the National Pollutant Discharge Elimination System, ~~Public Law 92-500~~ created by the Clean Water Act, 33 U.S.C. 1251 et seq., be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five thousand dollars for each day of such violation or by imprisonment for not more than six months in the county jail, and in assessing the amount of the fine the court shall consider the size of the operation and the degree and extent of the pollution;

(c) For refusing the right of entry and inspection to any authorized departmental representative, violation of any effluent standards and limitations, filing requirements, monitoring requirements, or water quality standards, or for failure to obtain a permit, or for violation of a permit or any permit condition or limitation or any rules, regulations, or orders of the director under the National Pollutant Discharge Elimination System, Public--Law--92-500 created by the Clean Water Act, 33 U.S.C. 1251 et seq., be subject to a civil penalty of not more than five thousand dollars per day, the amount of such penalty to be based on the size of the operation and the degree and extent of the pollution; and

(d) For knowingly making any false statement, representation, or certification in any application, record, report, plan, or other document filed pursuant to the National Pollutant Discharge Elimination System, 33 U.S.C., section 1342, Public--Law---92-500, or for falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required under such system, be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five thousand dollars for each day that such violation occurs; and -

(e) For (i) failure to report emission data, (ii) failure to obtain a permit or pay any required fee for obtaining such permit, (iii) violation of an air pollution permit or any permit condition or limitation, (iv) violation of emission standards or limitations, except on motor vehicles, (v) failure to meet incremental dates in compliance schedules, or (vi) violation of any order issued under section 81-1507, Reissue Revised Statutes of Nebraska, 1943, be subject to a civil penalty of not more than five hundred dollars a day, the amount of such penalty to be based on the size of the operation and the degree and extent of the pollution.

Except in cases when a clear criminal intent is shown, all prosecutions of owners or operators made after the effective date of this act shall be civil in nature.

(2) Any person who violates any of the provisions of sections 31-1501 to 31-1532 or fails to perform any duty imposed by sections 31-1501 to 31-1532 or any regulation issued under sections 31-1501 to 31-1532 or who violates any order or determination of the director promulgated pursuant to sections 31-1501 to 31-1532, 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 sections 81-1501 to 81-1532 occurred.

(3) In addition to the penalties provided by this section, the director, whenever he has reason to believe that any person, firm, or corporation is violating any provision of sections 81-1501 to 81-1532, any regulation promulgated thereunder, or any order of the director, may petition the district court for an injunction. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the provisions of Chapter 81, article 15.

Sec. 4. That original sections 81-1504, 81-1505, and 81-1508, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.