

LEGISLATIVE BILL 1078

Approved by the Governor April 10, 1984

Introduced by Kahle, 37; Chronister, 18

AN ACT relating to the Environmental Protection Act; to amend sections 81-1518, 81-1521.04, 81-1527, and 81-1528, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1502, 81-1504, 81-1505, and 81-1508, Revised Statutes Supplement, 1983; to redefine terms; to make available certain information relating to hazardous waste as prescribed; to provide and change powers and duties as prescribed; to provide for rules and regulations as prescribed; to provide and change penalties; to change an exemption; to harmonize provisions; 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 81-1502, Revised Statutes Supplement, 1983, be amended to read as follows: 81-1502. As used in the Environmental Protection 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) Chairperson shall mean the chairperson 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, land, or water or is violating the ~~provisions of sections 81-1501 to 81-1533~~ Environmental Protection Act or any rule or regulation of the department in respect thereof;

(5) Control and controlling shall include prohibition and prohibiting as related to air, land, or water 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, including hazardous 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 Department of Environmental Control;~~

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

(12) Sewerage system shall mean pipelines, 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 air, land, or 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 (a) create a nuisance; (b) be harmful, detrimental, or injurious to public health, safety, or welfare; (c) be injurious to plant and animal life and property; or (d) 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 the manmade or man-induced alteration of the chemical, physical, biological, and radiological integrity of water;

(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;

(22) Point source shall mean any discernible confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(23) Effluent limitation shall mean any restriction established by the council on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state, including schedules of compliance;

(24) Schedule of compliance shall mean a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

(25) Hazardous waste shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;

(26) Solid waste shall mean any garbage, refuse,

or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or naturally occurring or accelerated produced radioactive material as defined in the Nebraska radiological health regulations or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(27) Storage, when used in connection with hazardous waste, shall mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste; ~~except by these generators who store their own waste on site for less than ninety days for subsequent disposal, recovery, or reuse;~~

(28) Manifest shall mean the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

(29) Processing shall mean to treat, detoxify, neutralize, incinerate, biodegrade, or otherwise process a hazardous waste to remove such waste's harmful properties or characteristics for disposal in accordance with regulations established by the council;

(30) Well shall mean a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension of such shaft or hole;

(31) Injection well shall mean a well into which fluids are injected;

(32) Fluid shall mean a material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

(33) Mineral production well shall mean a well drilled to promote extraction of mineral resources or energy including, but not limited to, a well designed for (a) mining of sulfur by the Frasch process, (b) solution mining of sodium chloride, potash, phosphate, copper, uranium, or any other mineral which can be mined by this process, (c) in situ combustion of coal, tar sands, oil shale, or any other fossil fuel, or (d) recovery of geothermal energy for the production of electric power. Mineral production well shall not include any well designed for conventional oil or gas production, for use of fluids to promote enhanced recovery of oil or natural gas, or for injection of hydrocarbons for storage purposes; and

(34) Mineral exploration hole shall mean a hole

bored, drilled, driven, or dug in the act of exploring for a mineral other than oil and gas.

Sec. 2. That section 81-1504, Revised Statutes Supplement, 1983, 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 Environmental Protection 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 the Environmental Protection Act;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the federal Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 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 the Environmental Protection Act, 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 solid waste disposal facilities and 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 or her;

(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 the Environmental Protection Act;

(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 the Environmental Protection Act;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, mining and land quality, 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)(a) 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; and

(b) To require, for purposes of developing or assisting the development of any regulation or enforcing any of the provisions of the Environmental Protection Act which pertain to hazardous waste, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste, upon request of any officer, employee, or representative of the department, to furnish information relating to such waste and any permit involved. Such person shall have access at all reasonable times to a copy of all results relating to such waste;

(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 the Environmental Protection Act;

(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 the Environmental Protection Act, 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 the Environmental Protection Act;

(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. Prosecutions commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in the Environmental Protection Act;

(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;

(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 as provided in sections 84-306.01 to 84-306.05 for state employees;

(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. 7401 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 areawide, 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. 3. That section 81-1505, Revised Statutes Supplement, 1983, be amended to read as follows:

81-1505. (1) In order to carry out the purposes of the Environmental Protection Act, 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, and 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 subdivisions (2)(c) and (3) of section 81-1506 ~~(2)(e)~~ and ~~(3)~~ with respect to installation, change, alterations in, or additions to any wastewater treatment works, and requirements necessary for proper maintenance thereof.

(9)(a) The council shall adopt and promulgate rules and regulations for controlling mineral exploration holes and mineral production and injection wells. The rules and regulations shall include standards for the construction, operation, and abandonment of such holes and wells. The standards shall protect the public health and welfare and air, land, water, and subsurface resources so as to control, minimize, and eliminate hazards to humans, animals, and the environment. Consideration shall be given to:

(i) Area conditions such as suitability of location, geologic formations, topography, industry, agriculture, population density, wildlife, fish and other aquatic life, sites of archeological and historical importance, mineral, land, and water resources, and the existing economic activities of the area including, but not limited to, agriculture, recreation, tourism, and industry;

(ii) A site specific evaluation of the geologic and hydrologic suitability of the site and the injection, disposal, and production zones;

(iii) The quality of the existing ground water, the effects of exemption of the aquifer from any existing water quality standards, and requirements for restoration of the aquifer;

(iv) Standards for design and use of production facilities, which shall include, but not be limited to, all wells, pumping equipment, surface structures, and associated land required for operation of injection or production wells; and

(v) Conditions required for closure, abandonment, or restoration of mineral exploration holes, injection and production wells, and production facilities in order to protect the public health and welfare and air, land, water, and subsurface resources.

(b) The council shall establish a schedule of fees for regulated activities and facilities and for permits for such activities and facilities. The fees shall be sufficient, but shall not exceed the amount necessary,

to pay the department for the direct costs of evaluating, processing, and monitoring during and after operation of regulated facilities or performance of regulated activities.

(e) The council shall adopt and promulgate rules and regulations requiring performance bonds or financial surety for regulated activities or facilities which may endanger public health and welfare or air, land, water, or subsurface resources. Individual bond or financial surety amounts shall be set by the director at levels reasonable and necessary for reliable performance of duties and responsibilities specifically required by law, rule, and regulation. Such bond amounts shall be sufficient to allow the department to perform restoration activities at any time due to failure of the applicant to perform the required restoration.

(c) (d) With respect to mineral production wells, the council shall adopt and promulgate rules and regulations which require restoration of air, land, water, and subsurface resources and require mineral production well permit applications to include a restoration plan for the air, land, water, and subsurface resources affected. Such rules and regulations may provide for issuance of a research and development permit which authorizes construction and operation of a pilot plant by the permittee for the purpose of demonstrating the permittee's ability to inject and restore in a manner which meets the standards required by subsection (9) of this section and the rules and regulations adopted pursuant to such subsection.

The rules and regulations adopted and promulgated may also provide for issuance of a commercial permit after a finding by the department that the injection and restoration procedures authorized by the research and development permit have been successful in demonstrating the applicant's ability to inject and restore in a manner which meets the standards required by subsection (9) of this section and the rules and regulations adopted pursuant to such subsection.

(d) (e) For the purpose of subsection (9) of this section, unless the context otherwise requires, restoration shall mean the employment, during and after an activity, of procedures reasonably designed to control, minimize, and eliminate hazards to humans, animals, and the environment, to protect the public health and welfare and air, land, water, and subsurface resources, and to return each resource to a quality of use consistent with the uses for which the resource was suitable prior to the activity.

(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 ground water 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 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 areawide, 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)(a) In adopting regulations for hazardous waste management, the council shall give consideration to generation of hazardous wastes, labeling practices, containers used, treatment, storage, collection, transportation including a manifest system, processing, resource recovery, and disposal of hazardous wastes. It shall consider the permitting, licensing, design and construction, and development and operational plans for hazardous waste treatment, storage, and disposal facilities, and conditions for licensing or permitting of hazardous waste treatment, storage, and disposal areas. It shall consider modification, suspension, or revocation of such licenses and permits, including requirements for waste analysis, site improvements, fire prevention,

safety, security, restricted access, and covering and handling of hazardous liquids and materials. Licenses and permits for hazardous waste, treatment, storage, and disposal facilities shall not be issued until certification by the State Fire Marshal as to fire prevention and fire safety has been received by the department. The council shall further consider the need at treatment, storage, or disposal facilities for required equipment, communications and alarms, personnel training, and contingency plans for any emergencies that might arise and for a coordinator during such emergencies.

In addition the council shall give consideration to (i) ground water monitoring, (ii) use and management of containers and tanks, (iii) surface impoundments, (iv) waste piles, (v) land treatment, (vi) incinerators, (vii) chemical or biological treatment, (viii) landfills including the surveying thereof, and (ix) special requirements for ignitable, reactive, or incompatible wastes.

In considering closure and postclosure of hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would result in the owner or operator closing his or her facility so as to minimize the need for future maintenance, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, postclosure escape of hazardous waste, hazardous waste constituents, and leachate to the ground water or surface waters, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, waste decomposition to the atmosphere.

Such regulations adopted pursuant to this subsection shall in all respects comply with ~~this act~~ the Environmental Protection Act and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(b) In adopting regulations for hazardous waste management, the council shall consider, in addition to criteria in subdivision (a) of this subsection, establishing criteria for (i) identifying hazardous waste including extraction procedures, toxicity, persistence, and degradability in nature, potential for accumulation in tissue, flammability or ignitability, corrosiveness, reactivity, and generation of pressure through decomposition, heat, or other means, and other hazardous characteristics, (ii) listing all materials it deems hazardous and which should be subject to regulation, and (iii) locating treatment, storage, or disposal facilities for such wastes. ~~if any such facility is constructed subsequent to six months after May 29, 1981.~~ In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b)(i) of this subsection, no regulation shall be adopted without the approval of the State Fire Marshal. 7

(c) In adopting regulations for hazardous waste management, the council shall consider establishing a schedule of fees to be paid to the director by licensees or permittees operating hazardous waste processing facilities or disposal areas on the basis of a monetary value per cubic foot of the hazardous wastes, sufficient but not exceeding the amount necessary to reimburse the department for the costs of monitoring such facilities or areas during and after operation of such facilities or areas. The licensees may assess a cost against persons using the facilities or areas. The director shall remit any money collected from fees paid to him or her to the State Treasurer. Upon receipt of any such remittance, the State Treasurer shall deposit the entire amount thereof in the state General Fund. 7 and

(d) In adopting regulations for solid waste disposal, the council shall consider storage, collection, transportation, processing, resource recovery, and disposal of solid waste, developmental 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 of disposal areas, including site improvements, fire prevention, ground water protection, safety and restricted access, handling of liquid and hazardous materials, insect and rodent control, salvage operations, and the methods of disposing of accumulations of junk outside of solid waste disposal areas. Such regulations shall in all respects comply with the Environmental Protection Act and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(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 cleanup, toxicity, degradability, and dispersal characteristics of the substance.

(15) In adopting regulations governing composting and composting sites, the council shall give consideration to:

(a) Approval of a proposed site by the local governing body, including the zoning authority, if any, prior to issuance of a permit by the department;

(b) Issuance of permits by the department for such composting operations, with conditions if necessary;

(c) Submission of construction and operational plans by the applicant for a permit to the department, with approval of such plans before issuance of such permit;

(d) A term of five years for such permits, which shall not be transferable;

(e) Renewal of permits if the operation has been

in substantial compliance with composting regulations adopted pursuant to this subsection, permit conditions, and operational plans;

(f) Review by the department of materials to be composted, including chemical analysis when found by the department to be necessary;

(g) Inspections of such compost sites at least semiannually followed by ratings, with a copy of such ratings to be given to the site management. Operations out of compliance with composting regulations, permit conditions, or operational plans shall be given a reasonable time for voluntary compliance and failure to do so within the specified time shall result in a hearing after notice is given, at which time the owner or operator shall appear and show cause why his or her permit should not be revoked;

(h) Special permits of the department for demonstration projects not to exceed six months; and

(i) Exemptions from permits of the department.

(16) 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.

(17) 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.

(18) Standards of quality of the air, water, 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, water, 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, water, or land of this state which result in reducing the quality of such air, water, or land below the standards established therefor by the council.

(19) All standards of quality of air, water, or land and all rules and regulations adopted pursuant to law by the council prior to May 29, 1981, and applicable to specified air, water, or land are hereby approved and adopted as standards of quality of and rules and regulations for such air, water, or land.

(20) In addition to such standards as are heretofore authorized, the council shall adopt and promulgate 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 Clean Water Act, 33 U.S.C. 1251 et seq.

(21)(a) The council shall adopt and promulgate rules and regulations requiring all new or renewal permit or license applicants regulated under the Environmental Protection Act to establish proof of financial responsibility by providing funds in the event of abandonment, default, or other inability of the permittee or licensee to meet the requirements of its permit or license or other conditions imposed by the department pursuant to the act. The council may exempt classes of permittees or licensees from the requirements of this subdivision when a finding is made that such exemption shall not result in a significant risk to the public health and welfare.

(b) Proof of financial responsibility shall include any of the following made payable to or held in trust for the benefit of the state and approved by the department: (i) A surety bond executed by the applicant and a corporate surety licensed to do business in this state; (ii) a deposit of cash, negotiable bonds of the United States or the state, negotiable certificates of deposit, or an irrevocable letter of credit of any bank or other savings institution organized or transacting business in the United States in an amount or which has a market value equal to or greater than the amount of the

bonds required for the bonded area under the same terms and conditions upon which surety bonds are deposited; (iii) an established escrow account; or (iv) a bond of the applicant without separate surety upon a satisfactory demonstration to the director that such applicant has the financial means sufficient to self-bond pursuant to bonding requirements adopted by the council consistent with the purposes of this subdivision.

(c) The director shall determine the amount of the bond, deposit, or escrow account which shall be reasonable and sufficient so the department may, if the permittee or licensee is unable or unwilling to do so and in the event of forfeiture of the bond or other financial responsibility methods, arrange to rectify any improper management technique committed during the term of the permit or license and assure the performance of duties and responsibilities required by the permit or license pursuant to law, rules, and regulations.

(d) In determining the amount of the bond or other method of financial responsibility, the director shall consider the requirements of the permit or license or any conditions specified by the department, the probable difficulty of completing the requirements of such permit, license, or conditions due to such factors as topography, geology of the site, and hydrology, and the prior history of environmental activities of the applicant.

Sec. 4. That section 81-1508, Revised Statutes Supplement, 1983, be amended to read as follows:

81-1508. (1) Any person who ~~shall violate~~ violates any of the provisions of the Environmental Protection Act, or who fails to perform any duty imposed by such act shall:

(a) For any violation except of (i) a permit or permit condition or limitation pursuant to the National Pollutant Discharge Elimination System, created by the Clean Water Act, 33 U.S.C. 1251 et seq., (ii) air pollution standards and regulations, (iii) hazardous waste standards and regulations, or (iv) mineral production or injection well control 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 or she violates the provisions of or fails to perform any of the duties imposed by the Environmental Protection 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;

(b) For willful or negligent violation of water quality standards, and effluent standards and limitations,

for failure to obtain a permit or meet the filing requirements therefor, for discharging without a permit, or for violation of a permit or any permit condition or limitation under the National Pollutant Discharge Elimination System, 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, 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;

(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, 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;

(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, 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;

(f) For violation of any air pollution control law or regulation, be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five thousand dollars per day and each day the violation occurs shall be considered a separate offense. The court shall, in assessing the amount of the fine, consider the extent of the pollution and the size of the

operation;

(g) For violation of any hazardous waste permit or license, permit or license condition, limitation, law, or regulation or for any false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of program compliance (i) be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars per day and each day the violation occurs shall be considered a separate offense or (ii) be subject to a civil penalty of not more than ten thousand dollars per day, and each day the violation occurs shall be considered a separate offense. In addition, the person, or if such person is a corporation the officers of such corporation, may be imprisoned ~~in the county jail~~ for a period of not more than ~~sixty days~~ six months and be enjoined from continuing such violation. Whether the punishment for violation of any hazardous waste permit or license, permit or license condition, limitation, law, or regulation is criminal or civil, the court shall, in assessing the amount of the penalty, consider the size of the operation, the degree and extent of the pollution, and any injuries to humans, animals, or the environment; and

(h) For violation of any mineral production or injection control permit, permit condition, limitation, law, or regulation (i) be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars per day and each day the violation occurs shall be considered a separate offense or (ii) be subject to a civil penalty of not more than ten thousand dollars per day, and each day the violation occurs shall be considered a separate offense. In addition, the person, or if such person is a corporation the officers of the corporation, may be imprisoned in the county jail for a period of not more than sixty days and be enjoined from continuing such violation.

Except in cases when a clear criminal intent or knowing violation is shown, all prosecutions of owners or operators made after April 18, 1979, shall be civil in nature.

(2) Any person who violates any of the provisions of the Environmental Protection Act or fails to perform any duty imposed by such act or any regulation issued under such act or who violates any order or determination of the director promulgated pursuant to such 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 the Environmental Protection Act occurred.

(3) Except as provided for in subsection (4) of this section for the handling, storage, treatment, transportation, or disposal of solid or hazardous waste, in addition to the penalties provided by this section, the director, whenever he or she has reason to believe that any person, firm, or corporation is violating or threatening to violate any provision of the Environmental Protection Act, 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 Environmental Protection Act.

(4) Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to the health of humans or animals, or to the environment, the director may petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts, to stop such handling, storage, treatment, transportation, or disposal, and to take such other action as may be necessary. 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 Environmental Protection Act.

Sec. 5. That section 81-1518, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1518. (1) Before the director shall approve a new 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 council, or board of trustees, advising them of the application filed with the director together with the department's recommendation whether the proposed disposal area can be made environmentally acceptable. A hearing shall be had by the county board, city council, or board of trustees within forty-five 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 or her designated representative shall inspect the proposed site and determine if the proposed operation complies with the provisions of sections 81-1501 to 81-1533 the Environmental Protection Act and the rules and regulations adopted under sections 81-1501 to 81-1533 such act and the ordinances of a city or village regulating the disposal of solid wastes, and has been approved by the governmental subdivision where the area is to be located; and if the director finds that the applicant is a responsible and suitable person to conduct the business, the director 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, which bond shall terminate one year following the last day of the license period; Provided, when the applicant is a county, city or village, no bond shall be required proof of financial responsibility pursuant to subdivision (2)(a) of section 81-1505.

Sec. 6. That section 81-1521.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521.04. As a condition of granting a permit or license to operate any hazardous waste disposal area facility, the permittee or licensee shall provide a surety bond, cash bond, or proof of financial responsibility pursuant to subdivision (2)(a) of section 81-1505 and liability insurance, including coverage against nonsudden and accidental occurrences, in an amount determined by the director, to insure the financial responsibility of the licensee for any liability incurred in the operation of the area and to insure that upon closure of the area all appropriate measures are taken to prevent present or future damage to human health and the environment. This section shall not be deemed to apply to any political subdivision or state agency.

Sec. 7. That section 81-1527, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1527. (1) Any records or other information furnished to or obtained by the department concerning one or more air, water, or land contaminant sources, which

records or information, as certified by the owner or operator, and determined by the director to relate to methods or processes entitled to protection as trade secrets of such owner or operator, shall be only for the confidential use of the department in the administration of sections 81-1501 to 81-1532 the Environmental Protection Act, unless such owner or operator shall expressly agree to their publication or availability to the general public, except, Provided, that emission data obtained under the federal Clean Air Act of 1970, 42 U.S.C. 1857 et seq., or effluent data, permit applications, draft permits, or permits as issued, all under the National Pollutant Discharge Elimination System, pursuant to the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended, shall be available to the public during business hours, and any information to be accorded confidential status in a national pollutant discharge elimination system form shall be forwarded to the Regional Administrator of the Environmental Protection Agency for concurrence with the director's determination of such status. Nothing in this section shall be construed to prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of water or the land or the outdoor atmosphere, Provided, that as long as such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

(2) The director shall permit the Administrator or Regional Administrator of the Environmental Protection Agency or his or her delegates to inspect the confidential records of the department concerning a given source.

Sec. 8. That section 81-1528, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1528. (1) The Environmental Protection Act sections 81-1501 to 81-1533 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 sections 81-1501 to 81-1533 the Environmental Protection Act or any rule or regulation adopted pursuant to sections 81-1501 to 81-1533, Provided, such act, except 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 director 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 sections 81-1501 to 81-1533 the Environmental Protection Act or any rule or regulation

adopted pursuant to sections 81-1501 to 81-1533 such act in any political subdivision holding a certificate of exemption, the director may suspend the certificate of exemption and sections 81-1501 to 81-1533 the Environmental Protection 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 or her designated representative shall promptly investigate such petition. If the recommendation of the director or his or her designated representative is against the granting of a certificate of exemption and he or she, in his or her discretion, concludes that a hearing would be advisable, a hearing shall be held as provided in section 81-1507 on the questions of whether the resolution, ordinance, or regulation is consistent with the substantive provisions of sections 81-1501 to 81-1533 the Environmental Protection Act or any rule or regulation adopted pursuant to sections 81-1501 to 81-1533 such 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 sections 81-1501 to 81-1533 the Environmental Protection Act shall be construed to supersede or oust the jurisdiction of any local air, water, or land pollution control program in operation on May 26, 1971. ~~Within 7~~ ~~Provided, that within~~ one year from such date any such program shall meet all requirements of sections 81-1501 to 81-1533 the Environmental Protection Act for a local air, water, or land pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

(6) Cities of the second class and villages shall be exempt from the provisions of sections 19-4101 to 19-4121 and 81-1501 to 81-1533 the Environmental Protection Act pertaining to licensing and control of nonhazardous solid waste disposal systems; ~~Provided, that~~

if such cities and villages provide solid waste disposal systems so that no pollution of waters of the state result from such disposal systems, and provided further, that such cities and villages comply with minimum standards for identification and disposition of hazardous wastes which do not result in the pollution of waters of the state. The department shall act in an advisory capacity to such cities and villages and shall have the right to inspect solid waste disposal sites and evaluate them according to the site evaluation criteria promulgated pursuant to the Resource Recovery and Conservation Act, as amended, 42 U.S.C. 6901 et seq. The department shall notify the community of the results of its evaluation.

Sec. 9. That original sections 81-1518, 81-1521.04, 81-1527, and 81-1528, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1502, 81-1504, 81-1505, and 81-1508, Revised Statutes Supplement, 1983, are repealed.

Sec. 10. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.