

LEGISLATIVE BILL 217

Approved by the Governor April 18, 1986

Introduced by Beutler, 28; Landis, 46

AN ACT relating to regulated substances; to amend sections 81-526 and 81-551, Reissue Revised Statutes of Nebraska, 1943, section 81-1504, Revised Statutes Supplement, 1984, and section 81-502, Revised Statutes Supplement, 1985; to adopt the Petroleum Products and Hazardous Substances Storage and Handling Act; to create a fund; to provide additional duties; to provide for enforcement; to harmonize provisions; and to repeal the original sections.

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

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

Sec. 2. The Legislature finds that the number of leaking underground storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because substances contained in leaking storage tanks are often potential ground water contaminants and major fire and explosive hazards.

For the reasons stated in this section, the Legislature deems it necessary to provide a program of storage tank registration and inspection as a preventative measure and a comprehensive leak cleanup program as a responsive measure. Primary responsibility for the Petroleum Products and Hazardous Substances Storage and Handling Act shall be with the Department of Environmental Control. However, preventative measures described in such act shall also be carried out by the State Fire Marshal. The State Fire Marshal's actions shall be pursuant to an interagency agreement with the Department of Environmental Control.

Sec. 3. As used in the Petroleum Products and Hazardous Substances Storage and Handling Act, unless the context otherwise requires:

(1) Operator shall mean any person in control of, or having responsibility for, the daily operation of a tank;

(2) Owner shall mean:

(a) In the case of a tank in use on the effective date of this act, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances; and

(b) In the case of any tank in use before the effective date of this act, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use;

(3) Permanent abandonment shall mean that a tank has been taken permanently out of service as a storage vessel for any reason or has not been used for active storage for more than one year;

(4) Person shall mean any individual, firm, joint venture, partnership, corporation, association, political subdivision, cooperative association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank;

(5) Regulated substance shall mean:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under subtitle C of such act; and

(b) Any petroleum product including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas;

(6) Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank into ground water, surface water, or subsurface soils;

(7) Tank shall mean any tank, either wholly or partially underground, which is used for the storage or dispensing of regulated substances and any piping, pump, or other appurtenance thereto. Tank shall not include any:

(a) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for consumptive use on the premises where stored, subject to a one-time fee;

(b) Tank with a storage capacity of one thousand one hundred gallons or less used for storing heating oil for consumptive use on the premises where stored, subject to a one-time fee;

(c) Septic tank; or

(d) Tank situated in an underground area such

as a basement, cellar, mineworking, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor; and

(8) Temporary abandonment shall mean that a tank will be or has been out of service for at least one hundred eighty days but not more than one year.

Sec. 4. Any farm or residential tank or tank used for storing heating oil, as defined in subdivisions (7)(a) and (7)(b) of section 3 of this act shall be registered with the State Fire Marshal. The registration shall be accompanied by a one-time fee of five dollars and shall be valid until the State Fire Marshal is notified that a tank so registered has been permanently abandoned. Such registration shall specify the ownership of, location of, and substance stored in the tank to be registered.

Sec. 5. (1) After January 1, 1987, no person shall (a) maintain or use any tank for the storage of regulated substances or (b) install any new tank without first securing a permit from the State Fire Marshal.

(2) Within six months after January 1, 1987, and each year thereafter, all owners of operating tanks, except those provided for in subsection (3) of this section, shall annually secure a registration permit for each tank. All registration permits shall be annual permits and shall expire on December 31 of the year for which the permit was issued. Such permits shall contain the information specified in subsection (4) of this section.

(3) In the case of tanks permanently abandoned on or after January 1, 1974, an annual permit shall not be required and an initial registration permit shall be sufficient.

(4) The application for a registration permit shall be provided by and filed with the State Fire Marshal's office and shall require, but not be limited to, the following information:

(a) The date the tank was placed in or taken out of operation;

(b) The age of the tank;

(c) The size, type, and location of the tank;

and

(d) The type of substances stored in the tank and the quantity of such substances remaining in the tank if the tank was permanently abandoned prior to the effective date of this act.

(5) The fee for a registration permit issued under subsection (2) of this section shall be based on the size of the tank as follows:

(a) Less than two thousand five hundred gallons, seven dollars and fifty cents per tank;

(b) Two thousand five hundred one to five thousand gallons, ten dollars per tank;

(c) Five thousand one to seven thousand five hundred gallons, twelve dollars and fifty cents per tank; and

(d) Over seven thousand five hundred gallons, fifteen dollars per tank.

The registration permit fee, collected pursuant to this subsection or section 4 of this act, shall be deposited in the Petroleum Products and Hazardous Substances Storage and Handling Fund, which is hereby created as a cash fund. The fund shall also consist of any money appropriated by the state. The fund shall be administered by the Department of Environmental Control to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 6. Before the State Fire Marshal denies an application for a permit, the affected person shall be given notice and opportunity for a hearing under procedures established by the State Fire Marshal. Upon receipt of the notification, any person aggrieved by the denial or revocation of a permit may request a hearing within ten days or the decision of the State Fire Marshal shall become final. When the State Fire Marshal has reason to believe that a permitholder's activities create an immediate threat to public safety, a permit may be suspended until the hearing process is complete. Any person aggrieved by a final decision of the State Fire Marshal may appeal such action pursuant to Chapter 84, article 9.

Sec. 7. The State Fire Marshal shall adopt and promulgate rules and regulations governing release, detection, prevention, and correction procedures applicable to all owners and operators as shall be necessary to protect human health, public safety, and the environment. Regulations may distinguish between types, classes, and ages of tanks. In making such distinctions, the State Fire Marshal shall consider, but not be limited to, location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, depth to the groundwater, size of the tanks, quantity of regulated substances periodically

deposited in or dispensed from the tanks, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated. Before adoption, such regulations shall be reviewed and approved by the Director of Environmental Control. The director shall determine whether the proposed regulations are adequate to protect the environment. Rules and regulations adopted and promulgated pursuant to this section shall include, but not be limited to:

(1) Proper procedures and specifications for the construction, design, installation, replacement, or repair of tanks;

(2) A permit system for all tanks;

(3) A program to establish an inspection system for all tanks. Such program shall provide for periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal. A fee schedule shall also be developed for the inspection of tanks in the manner prescribed in section 81-505.01. Such inspection fees shall be paid into the State Fire Marshal Cash Fund for the administration of the Petroleum Products and Hazardous Substances Storage and Handling Act. No fee shall be charged for the spot checks of monitoring systems by the State Fire Marshal;

(4) A monitoring system for all tanks which includes, but is not limited to, the following:

(a) An inventory control procedure for any tank used to hold petroleum products or hazardous substances for resale;

(b) An inventory control procedure for any tank used solely for consumptive onsite purposes and not for resale. Such control procedure shall determine the method of inventory measurement giving consideration to the economic burden created by the procedure. The frequency of inventory measurement for such category of tank shall include at least one measurement every thirty days;

(c) Provisions for the prompt reporting of any release of a regulated substance; and

(d) A procedure for the proper method of monitoring tanks;

(5) A procedure for notifying the State Fire Marshal of temporarily or permanently abandoned tanks;

(6) A procedure for removing or making safe any abandoned tanks, except that the State Fire Marshal may dispense with such procedure in special circumstances;

(7) Financial responsibility requirements.

taking into account the financial responsibility requirements established pursuant to 49 U.S.C. 6991b(d);

(8) Requirements for maintaining a leak detection system, an inventory system, and a tank testing or comparable system or method designed to identify releases in a manner consistent with the protection of human health, public safety, and the environment; and

(9) Requirements for maintaining records of any monitoring or leak detection system, inventory control system, or tank testing or comparable system.

Sec. 8. Any reported or suspected release of a regulated substance from any tank shall be investigated by the State Fire Marshal and the Department of Environmental Control. In the event that the State Fire Marshal or the Department of Environmental Control finds an adverse effect caused by a release of a regulated substance from a tank:

(1) The State Fire Marshal shall (a) determine the immediate danger presented by the release, (b) take all steps necessary to assure immediate public safety, and (c) assist the Department of Environmental Control in determining the source of the release and taking all steps necessary to ensure that the release is halted;

(2) By order of the Department of Environmental Control, the owner or operator of the tank causing the release shall, after securing the source of the release, develop a plan of recovery to be approved by the Department of Environmental Control; and

(3) The approved recovery plan shall then be carried out by the owner or operator of the tank causing the release. All expenses incurred during the cleanup and recovery shall be paid by the owner or operator.

If it is determined that the source of the release is unknown or that the owner or operator of the facility causing the release is unknown or unavailable, a recovery plan shall be developed by or under the direction of the Department of Environmental Control. Such recovery plan shall be developed and carried out by the department with money from the Petroleum Products and Hazardous Substances Storage and Handling Fund if funds are available. If at a later date the owner or operator of the facility which caused the release is determined, he or she shall be responsible for recovery costs incurred on his or her behalf. Any money received from such person shall be deposited in the Petroleum Products and Hazardous Substances Storage and Handling Fund.

Sec. 9. Any person violating the Petroleum

Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders of the State Fire Marshal or the Department of Environmental Control adopted or issued pursuant to such act shall be subject to a civil fine of not more than five thousand dollars for each offense and, in the case of a continuing violation, each day of violation shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the size of the operation and the degree and extent of the pollution.

Sec. 10. The Department of Environmental Control or the State Fire Marshal may apply to the district court of the county where the violation is occurring or about to occur for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders adopted and promulgated under the act. The court shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Sec. 11. (1) Beginning January 31, 1987, any person who deposits regulated substances in a tank shall reasonably notify the owner or operator of such tank of the owner's or operator's registration requirements pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) The Department of Environmental Control shall design and make available a printed notice of registration for owners of tanks to any person who deposits regulated substances in a tank.

Sec. 12. That section 81-502, Revised Statutes Supplement, 1985, be amended to read as follows:

81-502. (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed child care facilities or

applicants for licenses for child care facilities, upon request by the Department of Social Services, pursuant to section 71-1903;

(iii) Licensed providers of early childhood programs or applicants for licenses to provide such programs, upon request of the Department of Social Services, pursuant to section 71-1913. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities one, intermediate care facilities two, intermediate care facilities three, or other facilities or institutions which are mentioned in subdivision (1) of section 71-2017, or applicants for licenses for such facilities or institutions, upon request by the Department of Health, pursuant to section 71-2022; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data bearing thereon, to adopt, promulgate, alter, and enforce rules and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and explosives;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof; and

(v) Chemicals, prozolin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist; and

(vi) Tanks used for the storage of regulated

substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to sections 81-502 to 81-552 and 81-5,115 to 81-5,146.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and as may be conferred and imposed by law.

(5) The rules and regulations adopted pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal.

Sec. 13. That section 81-526, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-526. The county attorney of any county, upon request of the State Fire Marshal, or his or her deputies or assistants, shall (1) assist such officers in the investigation of any fire which, in their

opinion, is of suspicious origin; and (2) act as attorney for such officers in all court proceedings in connection with the enforcement of the provisions of sections 81-513 to 81-519, and the Petroleum Products and Hazardous Substances Storage and Handling Act when, in the exercise of a reasonable discretion, the county attorney shall determine that the evidence is sufficient to justify the bringing of such court proceedings.

Sec. 14. That section 81-551, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-551. The duties and powers of the State Fire Marshal, his or her deputies, and assistants prescribed in sections 81-509 to 81-523, 81-526, 81-527, and 81-531 to 81-541, and the Petroleum Products and Hazardous Substances Storage and Handling Act shall not be applicable to the provisions of this act.

Sec. 15. That section 81-1504, Revised Statutes Supplement, 1984, 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 (i) or monitoring of emissions or discharges which cause or contribute to air, land, or water pollution or (ii) the monitoring of such emissions or discharges; 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, and 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; and

(30) To carry out the provisions of the Petroleum Products and Hazardous Substances Storage and Handling Act.

Sec. 16. That original sections 81-526 and 81-551, Reissue Revised Statutes of Nebraska, 1943, section 81-1504, Revised Statutes Supplement, 1984, and section 81-502, Revised Statutes Supplement, 1985, are repealed.