

LEGISLATIVE BILL 152

Approved by the Governor February 12, 1987

Introduced by Schmit, 23

AN ACT relating to environmental protection; to amend sections 81-1501, 81-1511, 81-1512, 81-1516, 81-1519, 81-1520, 81-1521.02, 81-1521.05, 81-1521.06, and 81-1529, Reissue Revised Statutes of Nebraska, 1943, and section 81-1507, Revised Statutes Supplement, 1986; to change internal references to cite an act by name; to eliminate a provision relating to a program which was in effect until July 19, 1981; to eliminate a provision relating to the transfer in 1971 of records, equipment, funds, powers, and duties to the Department of Environmental Control; and to repeal the original sections, and also sections 81-1521.07 and 81-1530, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 81-1501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1501. Whereas the water, land, and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state; and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be:

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

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

protection of each element of the environment, air, water, and land; and

(3) To cooperate with other states and the federal government to accomplish the objectives set forth in ~~sections 81-1501 to 81-1532~~ the Environmental Protection Act.

Sec. 2. That section 81-1507, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1507. (1) Whenever the director has reason to believe that a violation of any provision of ~~sections 81-1501 to 81-1532 or the Environmental Protection Act~~, a rule or regulation, or of any order of the department has occurred, he or she may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision of ~~sections 81-1501 to 81-1532 or the act~~, rule or regulation, or order alleged to be violated and the facts alleged to constitute a violation thereof, and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named therein requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (5) of this section not less than thirty days before the time set for the hearing.

(2) The director shall afford an opportunity for a fair hearing, in accordance with the provisions of ~~sections 81-1501 to 81-1532~~ the Environmental Protection Act, to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing, the director or hearing officer shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of ~~sections 81-1501 to 81-1532~~ the act and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the

basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the courts as provided in ~~sections 81-1501 to 81-1532~~ section 81-1509 within thirty days after notice has been sent to the parties.

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

(4) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare, the director may without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the director shall be afforded a hearing as soon as possible, and not later than ten days after such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(5) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby in a manner provided for service of a summons in a civil action. Proof of service shall be filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

(6) The hearings provided for in this section may be conducted by the director, or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be

taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. Witnesses who are subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 84-306.03 for state employees. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under the provisions of this section, the district court shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court therefor, furnish a certified transcript of the whole or any part of the stenographer's notes to any party to the action requiring and requesting the same.

Sec. 3. That section 81-1511, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1511. Any duly authorized officer, employee, or representative of the director may at any reasonable time, with the consent of the person or persons in control of an air, land, or water contaminant source, enter and inspect any property, premise, or place on or at which such a contaminant source is located or being constructed, installed, or established for the purpose of ascertaining the state of compliance with sections 81-1501 to 81-1532 the Environmental Protection Act and rules and regulations in force pursuant thereto. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by the district court as provided by law to such officer, employee, or representative of the department, for the purpose of enabling him or her to make such inspection. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials and warrants; nor shall any person obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in

acute and compelling emergency situations when there is neither sufficient time nor opportunity to obtain a search warrant. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Sec. 4. That section 81-1512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1512. Nothing in ~~sections 81-1501 to 81-1532~~ the Environmental Protection Act shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration; if such power is conferred by statute or constitutional provision; or inheres in the office.

Sec. 5. That section 81-1516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1516. No person shall dispose of any refuse, garbage, or rubbish at any place, except a disposal area licensed as provided by ~~sections 81-1501 to 81-1532~~ the Environmental Protection Act. Nothing in ~~sections 81-1501 to 81-1532~~ the act nor any act of the director shall usurp the legal right of a local governing body to develop and enforce local ordinances, codes, or rules and regulations on solid waste disposal equal to or more stringent than the provisions of ~~sections 81-1501 to 81-1532~~ the act, nor shall the provisions of ~~sections 81-1501 to 81-1532~~ the act relieve the applicant from obtaining a license from a local governing body when required or relieve the person owning or operating a disposal area from responsibility for securing proper zoning permits or complying with all applicable local ordinances, codes, or rules and regulations not in conflict with the provisions of ~~sections 81-1501 to 81-1532~~ the act.

Sec. 6. That section 81-1519, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1519. Licenses shall expire five years following the date of issuance, but may be renewed if the licensee has complied 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~~ and promulgated pursuant to the act.

Sec. 7. That section 81-1520, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1520. The director may revoke a license,

after reasonable notice and hearing, if he or she finds that the disposal area is not operated in accordance with the provisions of sections 81-1501 to 81-1532 the Environmental Protection Act and the rules and regulations adopted under sections 81-1501 to 81-1532 and promulgated pursuant to the act.

Sec. 8. That section 81-1521.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521.02. (1) Before the director ~~shall~~ **approve** ~~approves~~ a new hazardous 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 it of the application filed with the director together with the department's recommendation on whether the proposed disposal area can be made environmentally acceptable. A hearing shall be held 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** ~~approves~~ such area, notice shall be given once at least thirty days but not more than forty days before the hearing and a second time at least ten days before the hearing. Such notice shall be given by publication of a notice 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 state the time and place of hearing, the name of the applicant for a permit for such area, and the exact location of the area. In deciding whether to approve such area, the county board, city council, or board of trustees shall determine if such area will be in compliance with its zoning laws or violate any local ordinances or resolutions. The local governing body shall then notify the department of its action.

(3) If the applicant obtains the approval of the local governing body, he or she shall contact the department concerning site preparation and any engineering problems which may exist. Prior to obtaining the license, the director or his or her designated representative shall inspect the proposed area and determine if the proposed operation complies with the provisions of sections 81-1501 to 81-1533 the

Environmental Protection Act and sections 19-4101 to 19-4121, and all rules, regulations, and standards adopted and promulgated thereunder.

Sec. 9. That section 81-1521.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521.05. Licenses shall expire five years following the date of issuance but may be renewed if the licensee has complied with the provisions of this act the Environmental Protection Act and the rules and regulations adopted and promulgated thereunder.

Sec. 10. That section 81-1521.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521.06. The director may revoke the license, pursuant to subsection (3) of section 81-1507, if he or she finds that the hazardous waste disposal area is not being operated in accordance with the provisions of this act the Environmental Protection Act and the rules and regulations adopted and promulgated thereunder.

Sec. 11. That section 81-1529, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1529. Nothing in sections 81-1501 to 81-1532 the Environmental Protection Act shall be construed to:

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

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

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

Sec. 12. That original sections 81-1501, 81-1511, 81-1512, 81-1516, 81-1519, 81-1520, 81-1521.02, 81-1521.05, 81-1521.06, and 81-1529, Reissue Revised Statutes of Nebraska, 1943, and section 81-1507, Revised Statutes Supplement, 1986, and also sections 81-1521.07 and 81-1530, Reissue Revised Statutes of Nebraska, 1943, are repealed.