

LEGISLATIVE BILL 409

Approved by the Governor April 25, 1991

Introduced by R. Johnson, 34; Hartnett, 45;
Morrissey, 1; Dierks, 40; Coordsen, 32

AN ACT relating to environmental protection; to amend sections 66-1501, 66-1503, 66-1508, 66-1509, 66-1512, 66-1513, 66-1514, 66-1516, 66-1517, 66-1518, 66-1519, 66-1520, 66-1521, 66-1522, 66-1523, and 66-1525, Reissue Revised Statutes of Nebraska, 1943, and sections 81-15,117, 81-15,119, and 81-15,123, Revised Statutes Supplement, 1990; to define and redefine terms; to change provisions relating to fees for and reimbursements from the Petroleum Release Remedial Action Cash Fund; to provide for a state interest in certain litigation; to change provisions relating to rules and regulations; to require a report; to provide for the disposition of tangible personal property; to authorize remedial actions; to provide for reimbursement for damages, access to certain property, and the construction of certain provisions; 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 66-1501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1501. Sections 66-1501 to 66-1530 and sections 8, 18, and 19 of this act shall be known and may be cited as the Petroleum Release Remedial Action Act.

Sec. 2. That section 66-1503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1503. For purposes of the Petroleum Release Remedial Action Act, the definitions found in sections 66-1504 to 66-1515 and section 8 of this act shall be used.

Sec. 3. That section 66-1508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1508. Operator shall mean a person in

control of or having responsibility for the daily operation of a tank. Operator shall not include a person described in subsection (2) of section 66-1509.

Sec. 4. That section 66-1509, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1509. (1) Owner shall mean:

(a) ~~{+}~~ In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use, or dispensing of petroleum; and

(b) ~~{2}~~ In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(2) Owner shall not include a person who, without participating in the management of a tank, ~~holds and otherwise not engaged in petroleum production, refining, and marketing;~~

(a) ~~Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is located; or~~

(b) ~~Acquires ownership of a tank or the property on or within which a tank is located;~~

(i) ~~Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or~~

(ii) ~~If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.~~

Sec. 5. That section 66-1512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1512. Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils whether occurring before, on, or after May 27, 1989.

Sec. 6. That section 66-1513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1513. Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and

regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, cleanup, restoration, mitigation, and any other action ordered by the department or the State Fire Marshal which is reasonable and necessary. Remedial action shall not include:

(1) Tank restoration, upgrading, replacement, or rehabilitation;

(2) Actions which do not minimize, eliminate, or clean up a release or suspected release to protect the public safety, health, and welfare or the environment; or

(3) Loss of income, attorney's fees, relocation of any resident, decreased property values, reimbursement for the responsible person's own time spent in planning and administering a corrective action plan, and aesthetic improvements; and

(4) Compensation to third parties for bodily injury and property damage caused by a release.

Costs of remedial action shall not include costs for the actions specified in subdivisions (1) through (3) of this section, loss of income, attorney's fees, or reimbursement for the responsible person's own time spent in planning and administering a corrective action plan.

Sec. 7. That section 66-1514, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1514. Responsible person shall mean a person who is an owner or operator of a tank. ~~However, in the event that~~ If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:

(1) A person in the chain of title of a tank or in the property on or within which a tank is located;

(2) A or a person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is located; or

(3) A person who has acquired ownership of a tank or the property on or within which a tank is located;

(a) Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or

(b) If the tank or the property was security

for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

Such voluntary action who voluntarily proposes to implement required remedial action. Such voluntary action by a person in the chain of title of a tank or in the property on or within which a tank is located or a person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is located shall not be construed to render such party responsible or liable for remedial action under any law of the state or payment of the claim.

Sec. 8. Third-party claim shall mean a final judgment against a responsible person obtained by a third party for compensation for bodily injury and property damage caused by a release first reported after January 1, 1990.

Sec. 9. That section 66-1516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1516. No responsible person may avoid responsibility under state law for a release or third-party claim by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold-harmless, or similar agreement. This section shall not be construed to:

(1) Prohibit a responsible person from entering into an agreement by which the person is insured or is a member of a risk retention group and is thereby indemnified for part or all of the liability;

(2) Prohibit the enforcement of an insurance, hold-harmless, or indemnification agreement; or

(3) Bar a cause of action brought by a responsible person or by an insurer or guarantor, whether by right of subrogation or otherwise.

Sec. 10. That section 66-1517, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1517. Reimbursement for remedial actions and third-party claims shall be governed by the Petroleum Release Remedial Action Act.

Nothing in the act shall be construed to limit the powers of the department or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under the act. The remedies provided by the

act shall be in addition to those provided under existing statutory or common law.

For purposes of section 25-328, the state shall have an interest in any litigation which might result in a third-party claim.

Nothing in the act shall be construed to limit a person's duty to notify the department and the State Fire Marshal or to take other action related to a release as required pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act.

Nothing in the Petroleum Release Remedial Action Act shall be construed to allow a payment or reimbursement from the fund for compensating third parties for bodily injury and property damage caused by a release.

Sec. 11. That section 66-1518, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1518. (1) The Environmental Control Council shall adopt and promulgate rules and regulations regarding the form and procedure for applications for payment or reimbursement from the fund, procedures for investigation of claims for payment or reimbursement, procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund, procedures for auditing persons who have received payments from the fund, and other provisions necessary to carry out the Petroleum Release Remedial Action Act.

(2) The department, in consultation with interested parties, shall report to the Legislature at the beginning of every third year during which the fund is in existence on the availability of private insurance to insure the damages for which payment may be made from the fund.

Sec. 12. That section 66-1519, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1519. There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(1) The fees imposed by sections 66-1520 and 66-1521;

(2) Money paid under an agreement, stipulation, cost-recovery award under section 19 of this act, or settlement; and

(3) Money received by the department in the

form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

Money in the fund may only be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; ~~and (e)~~ (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; and (e) appraisal and other costs related to tangible personal property as provided in section 18 of this act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 13. That section 66-1520, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1520. (1) On or before August 1, 1989, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee to the State Fire Marshal for each registered tank. The fee shall be based on the size of the tank as follows:

(a) Up to two thousand five hundred gallons, fifty dollars per tank;

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

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

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

(2) On January 1, ~~1990~~ 1992, and each January 1 thereafter, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee of twenty-five seventy-five dollars to the State Fire Marshal for each registered tank.

(3) The State Fire Marshal shall remit the fees received pursuant to this section to the State Treasurer for credit to the fund.

Sec. 14. That section 66-1521, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1521. (1) A petroleum release remedial action fee is hereby imposed upon the refiner, importer, or distributor who first sells, offers for sale, or uses petroleum within this state, except that the fee shall not be imposed on petroleum packaged in individual containers of one hundred ten gallons or less and intended for sale or use in this state. The amount of the fee shall be three-tenths of one cent per gallon on motor vehicle fuels as defined in section 66-401 and one-tenth of one cent per gallon on petroleum other than such motor vehicle fuels plus any additional amount authorized by section 66-1522. The fee shall be paid by all refiners, importers, and distributors subject to the fee by filing a monthly return on or before the twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of sections 66-611 to 66-615, 66-621 to 66-626, and 66-630 shall apply to the administration and collection of the fee. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported. The fee paid under this subsection shall not be eligible for the credit under section 66-452.

(2) ~~After October 1, 1989, no~~ No refiner, importer, or distributor shall sell, offer for sale, or use petroleum in this state without having first obtained a ~~license. Application for a petroleum release remedial action license.~~ Application for a license shall be made to the Tax Commissioner. ~~The application for a petroleum release remedial action license shall be filed upon a form prepared and furnished by the Tax Commissioner. Such license shall be known as a petroleum release remedial action license.~~ Failure to obtain a license prior to such sale, offer for sale, or use of petroleum shall be a Class IV misdemeanor. The Tax Commissioner may suspend or cancel the license of any refiner, importer, or distributor who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to sections 66-614 and 66-615.

(3) The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out this section.

(4) The Tax Commissioner shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient

to reimburse himself or herself for the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed ~~sixty-five thousand dollars for the fiscal year 1989-90 and twenty-eight thousand dollars for each subsequent~~ fiscal year. The twenty-eight thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 15. That section 66-1522, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1522. (1) The Tax Commissioner shall collect the fee imposed by subsection (1) of section 66-1521, ~~beginning October 1, 1989.~~ Whenever the unobligated balance of the fund reaches five million dollars or more, the ~~department~~ Department of Environmental Control shall notify the Tax Commissioner, at which time the Tax Commissioner shall suspend the collection of the fee. If the unobligated balance of the fund falls below three million dollars, the department shall notify the Tax Commissioner who shall again start the collection of the fee until the unobligated balance of the fund reaches five million dollars. If the actual cash balance of the fund as reported by the accounting division of the Department of Administrative Services falls below two million dollars, the Department of Environmental Control shall notify the Tax Commissioner who shall start collection of an additional fee of three-tenths of one cent per gallon on motor vehicle fuels as defined in section 66-401 and an additional fee of one-tenth of one cent per gallon on petroleum other than such motor vehicle fuels until the actual cash balance of the fund as reported by the accounting division reaches four million dollars.

(2) Unobligated balance shall be the balance in the fund as of the twentieth day of any month less the estimated cost of the remedial action plans or third-party-claim payments which have been approved by the ~~department~~ Department of Environmental Control for the applications for reimbursement pending before the department. Such estimated cost shall be determined by

the department.

(3) The effective date of the notification shall be the first day of the next month following receipt of such notification by the commissioner if the notification is received thirty days prior to the first day of the next month. If the notification is not received thirty days prior to the first day of the next month, the effective date of such notification shall be the first day of the following month.

Sec. 16. That section 66-1523, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1523. (1) Except as provided in subsection (2) of this section, the The department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons in an amount not to exceed nine hundred seventy-five thousand dollars per occurrence for the cost of remedial action to eligible responsible persons for releases reported after July 17, 1986 1983, and for the cost of paying third-party claims. The responsible person shall be responsible for {1} the first ten thousand dollars of the cost of the remedial action or third-party claim, and {2} twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person in an amount not to exceed nine hundred eighty-five thousand dollars per occurrence for the cost of remedial action for releases reported after July 17, 1983, and for the cost of paying third-party claims. The responsible person shall be responsible for the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten

thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements shall be made in the order in which the applications for them were received by the department.

(5) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Sec. 17. That section 66-1525, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

66-1525. (1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1986 1983, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. The department may accept applications for reimbursement at any time on and after October 17, 1989-

(2) No reimbursement may be made unless the department determines that makes the following eligibility determinations:

{1} (a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank, at the time the release was discovered. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

{2} (b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

{3} (c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

{4} (d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested;

{5} (e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable; and

{6} (f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after the effective date of this act, the cause of action for the third-party claim was filed on or before June 30, 1993, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid (a) the first ten thousand dollars of the cost of the remedial action and (b) twenty-five percent of the remaining cost of the remedial action not to exceed fifteen thousand dollars the amount specified in subsection (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions {1} (2)(a) through {6} (g) of this section.

(4) The department may withhold taking action on an application during the pendency of an enforcement

action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

Sec. 18. Any tangible personal property remaining in existence at the close of a remedial action shall be owned proportionately by the responsible person and the department. If the responsible person and the department cannot agree upon the fair market value or salvage value of the property, either party may demand, in writing to the other party, that the property be appraised for determination of fair market value or salvage value. The cost of appraisal shall be paid from the fund.

The department shall pay to the responsible person his or her proportionate share of the fair market value or salvage value based upon the percentage paid by that person of the total cost of the remedial action, except that the responsible person's share shall in no case exceed twenty-five percent of the fair market value or salvage value of the property. Payment may be made either from the proceeds of the sale of the property or directly from the fund. Upon payment to the responsible person, title to the property shall vest in the state, and the property may be used in other remedial actions, stored until needed, maintained, or sold. Proceeds of the sale of the property shall be deposited in the fund.

Sec. 19. (1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Control, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Sec. 20. That section 81-15,117, Revised Statutes Supplement, 1990, be amended to read as follows:

81-15,117. Sections 81-15,117 to 81-15,127 and section 21 of this act shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

Sec. 21. If necessary in the course of an investigation or inspection or during the remedial action and if the owner of property or the owner's agent has specifically denied the Department of Environmental Control access to the property for such purposes, the department may order the owner or owner's agent to grant access to property for the performance of reasonable steps, including drilling, to determine the source and extent of contamination or for remediation. Access shall be by the department or by a person conducting an investigation, inspection, or remedial action at the direction of the department. All actions taken on the property shall be performed in the least obtrusive manner possible to allow the investigation, inspection, or remedial action to proceed. Upon completion of any such actions, the property shall be restored as nearly as possible to its original condition.

Sec. 22. That section 81-15,119, Revised

Statutes Supplement, 1990, be amended to read as follows:

81-15,119. For purposes of 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 but shall not include a person described in subdivision (2)(b) of this section;

(2)(a) Owner shall mean:

(i) ~~{a}~~ In the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances; and

(ii) ~~{b}~~ In the case of any tank in use before July 17, 1986, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(b) Owner shall not include a person who, without participating in the management of a tank, holds and otherwise not engaged in petroleum production, refining, and marketing;

(i) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is located; or

(ii) Acquires ownership of a tank or the property on or within which a tank is located;

(A) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(B) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure;

(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 or any overfilling of a tank into ground water, surface water, or subsurface soils;

(7) Tank shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. 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;

(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;

(e) Pipeline facility, including gathering lines:

(i) Regulated under the Natural Gas Pipeline Safety Act of 1979, 49 U.S.C. app. 1671;

(ii) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. app. 2001; or

(iii) Which is an intrastate pipeline regulated under state law comparable to the laws prescribed in subdivisions (e)(i) and (e)(ii) of this subdivision;

(f) Surface impoundment, pit, pond, or lagoon;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storm water or wastewater collection

system; 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. 23. That section 81-15,123, Revised Statutes Supplement, 1990, be amended to read as follows:

81-15,123. 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. Such rules and 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 ground water, 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 rules and regulations shall be reviewed and approved by the Director of Environmental Control who shall determine whether the proposed rules and 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 and registration 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 may also be developed for the inspection of new tank and piping installations and tank closures in the manner prescribed in section 81-505.01. Such inspection fees shall be remitted by the State Fire Marshal to the State Treasurer who shall credit them to the Underground Storage Tank Fund. No fee shall be charged for the periodic safety inspections and 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 42 U.S.C. 6991b(d);

(8) Requirements for maintaining a leak-detection system, an inventory inventory-control 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.

Nothing in this section shall be construed to require a subcontractor working under the direction of a licensed installation or removal contractor to be licensed.

Sec. 24. That original sections 66-1501, 66-1503, 66-1508, 66-1509, 66-1512, 66-1513, 66-1514, 66-1516, 66-1517, 66-1518, 66-1519, 66-1520, 66-1521, 66-1522, 66-1523, and 66-1525, Reissue Revised Statutes of Nebraska, 1943, and sections 81-15,117, 81-15,119, and 81-15,123, Revised Statutes Supplement, 1990, are repealed.

Sec. 25. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.