

LEGISLATIVE BILL 413

Approved by the Governor June 7, 1991

Introduced by Baack, 47

AN ACT relating to the Environmental Protection Act; to amend section 81-1508, Reissue Revised Statutes of Nebraska, 1943; to change penalty provisions as prescribed; and to repeal the original section.

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

Section 1. That section 81-1508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1508. (1) Any person who 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, as amended, 33 U.S.C. 1251 et seq., (ii) air pollution standards, rules, and regulations, (iii) hazardous waste standards, rules, and regulations, or (iv) mineral production or injection well control rules and regulations, be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars and a further fine of ten dollars per day together with costs for each day he or she violates the provisions of or fails to perform any of the duties imposed by the Environmental Protection Act. ~~In~~ In, ~~and~~ and in default of the payment of such fine and costs, the person; ~~and~~ or, 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, as amended, 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, for violation of any effluent standards and limitations, filing requirements, monitoring requirements, or water quality standards, 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, as amended, 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. 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 thousand 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 any knowing and willful violation of any air pollution control law, rule, 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, rule, 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 felony for any knowing and willful violation and shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars per day for each violation and may also be punished by a term of up to six months imprisonment 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 if the violator is a corporation, the officers of such corporation, may be imprisoned for the violation, a period of not more than 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, rule, 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, rule, 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 felony for any knowing and willful violation and shall, upon conviction thereof, be punished by a fine of not more than ten thousand dollars per day for each violation and may also be punished by a term of up to six months imprisonment 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 if the violator is a corporation, the officers of the corporation, may be imprisoned for the violation, 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, fails to perform any duty imposed by such act or any rule or regulation issued under such act, or 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 in which such violation or failure to perform any duty imposed by the Environmental Protection Act 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 act, any rule or regulation adopted and 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 Environmental Protection Act 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 Environmental Protection Act.

Sec. 2. That original section 81-1508, Reissue Revised Statutes of Nebraska, 1943, is repealed.