

LEGISLATIVE BILL 517

Approved by the Governor June 11, 1997

Introduced by Natural Resources Committee: Beutler, 28, Chairperson;
Bohlke, 33; Bronm, 23; Bruning, 3; Elmer, 44; McKenzie, 34;
Preister, 5; Schrock, 38

AN ACT relating to the environment; to amend sections 66-1510, 66-1518, 71-5301, 71-5302, 71-5304.01, 71-5313, and 81-1505, Reissue Revised Statutes of Nebraska; to change provisions relating to the Petroleum Release Remedial Action Act and the Nebraska Safe Drinking Water Act; to adopt the Drinking Water State Revolving Fund Act; to provide duties; 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. Section 66-1510, Reissue Revised Statutes of Nebraska, is amended to read:

66-1510. Petroleum shall mean:

(1) Motor vehicle fuels as defined in section 66-482, except denatured agricultural ethyl alcohol that is not blended with motor vehicle fuels;

(2) Diesel fuel as defined in section 66-654, including kerosene; and

(3) A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Sec. 2. Section 66-1518, Reissue Revised Statutes of Nebraska, is amended to read:

66-1518. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Such other Other procedures necessary to carry out the act.

(2) Such rules and regulations shall take into account the recommendations for rules and regulations developed by the technical advisory committee established pursuant to section 81-15,189.

(3) The director shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(4) The department shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are

submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

(5) 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. 3. Sections 3 to 16 of this act shall be known and may be cited as the Drinking Water State Revolving Fund Act.

Sec. 4. The Legislature finds that safe drinking water is essential to the protection of public health. The Legislature further finds that the construction, rehabilitation, operation, and maintenance of modern and efficient public water supply systems and safe drinking water projects are essential to protecting and improving the quality of the state's drinking water, that protecting water quality is an issue of concern to all citizens of the state, and that adequate public water supply systems and safe drinking water projects are essential to public health and to economic growth and development. Systems need to have adequate technical, managerial, and financial capacities to assure that the public is protected. Needed assistance can be provided to systems through the funds created by the Drinking Water State Revolving Fund Act. The Legislature finds and determines that the funds should be available in perpetuity for providing financial assistance to such systems and for such projects.

The Legislature finds and determines that these funds will consist of both state money and federal grant funds. In addition, the funds can be increased and additional needed safe drinking water projects for owners of public water supply systems can be undertaken more expeditiously through the issuance of revenue bonds by the Nebraska Investment Finance Authority and the deposit of the proceeds thereof into the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for financing the funds serves a public purpose by assisting public water supply systems in providing and improving safe drinking water projects and thereby providing safe drinking water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

Sec. 5. For purposes of the Drinking Water State Revolving Fund Act, unless the context otherwise requires:

(1) Safe Drinking Water Act means the federal Safe Drinking Water Act, as amended;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of a safe drinking water project for a public water supply system; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of public water supply systems; or the inspection or supervision of any of such items;

(3) Council means the Environmental Quality Council;

(4) Department means the Department of Environmental Quality;

(5) Director means the Director of Environmental Quality;

(6) Operate and maintain means all necessary activities, including the normal replacement of equipment or appurtenances, to assure the dependable and economical function of a public water supply system in accordance with its intended purpose;

(7) Owner means any person owning or operating a public water supply system;

(8) Public water supply system has the definition found in section 71-5301; and

(9) Safe drinking water project means the structures, equipment, surroundings, and processes required to establish and operate a public water supply system.

Sec. 6. The director may obligate and administer federal grants for construction of safe drinking water projects pursuant to the Safe Drinking

Water Act.

Sec. 7. (1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water supply system source water assessment programs, and implementation of a source water petition program under the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, in consultation with the Director of Regulation and Licensure, conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for security, investment, and repayment of bonds.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

Sec. 8. If funds are loaned to or otherwise credited to the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund with an obligation to repay such loan or credit, the obligation to repay the amount of the loan or credit and the interest thereon shall, upon authorization by the council and execution and delivery by the department of an agreement to repay the loan or credit, be a valid and binding obligation of

such funds or either fund or portions thereof and payable in accordance with the terms of the agreement executed by the department.

Sec. 9. Any pledge of the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund or any part thereof or any pledge of the assets of such funds made by the department as authorized by the council shall be valid and binding from the time the pledge is made. The revenue, money, or assets so pledged and received by such funds shall immediately be subject to a lien of such pledge without any physical delivery thereof or further act, and the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against such funds or the assets thereof, regardless of whether the parties have notice of the lien. Neither the action by the council, the pledge agreement executed by the department, nor any other instrument by which a pledge is created need be recorded.

Sec. 10. The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern eligible systems and application procedures and requirements for making loans under the Drinking Water State Revolving Fund Act;

(2) The power to adopt an intended use plan which shall include the funding priorities established in subsection (6) of section 71-5302. This intended use plan shall be reviewed annually by the council;

(3) The power to adopt a system of establishing interest rates to be charged on loans. The system may allow discounted interest rates for short-term loans or for serious financial hardship. The following factors shall be considered when making a determination of serious financial hardship: income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(4) The power to approve criteria for defining disadvantaged communities;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Drinking Water State Revolving Fund Act; and

(6) Except as limited by section 7 of this act, the power to obligate the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to or credits into such funds, including bonds, the proceeds of which are credited to such funds.

Sec. 11. The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water supply systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 10 of this act, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 7 of this act to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 7 of this act all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature;

(4) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the funds;

(c) Accounting for disbursements made by the funds; and

(d) Balancing the funds at the beginning and end of the accounting period;

(5) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(6) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(7) The power to develop an intended use plan, in consultation with the Director of Regulation and Licensure, for adoption by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Safe Drinking Water

Act; and

(9) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Drinking Water State Revolving Fund Act.

Sec. 12. Loans shall be made only to owners of eligible systems for eligible projects pursuant to the Safe Drinking Water Act.

Sec. 13. (1) All loans made under the Drinking Water State Revolving Fund Act shall be made only to owners of public water supply systems that:

(a) Meet the requirements of financial, technical, and managerial capability set by the department;

(b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

(c) In the case of a privately owned public water supply system, pledge sufficient revenue, collateral, or other security for the repayment of the loan;

(d) Agree to maintain financial records according to generally accepted government accounting principles and to conduct an audit of the financial records according to generally accepted government auditing standards; and

(e) Provide a written assurance, signed by an attorney holding an active license to practice in the State of Nebraska, that the recipient has proper title, easements, and rights-of-way to the property on or through which the safe drinking water project is to be constructed or extended.

(2) Loans made for the construction of a safe drinking water project shall be made only to owners of public water supply systems which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Require the contractor of the project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(b) Provide a written notice of completion and start of operation of the safe drinking water project;

(c) Employ a registered professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services; and

(d) Agree to operate and maintain the safe drinking water project so that it will function properly over the structural and material design life.

Sec. 14. Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years, except for systems serving disadvantaged communities which term may not exceed thirty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Sec. 15. If a municipality, county, or natural resources district fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities, counties, or natural resources district to which the municipality, county, or natural resources district is entitled under sections 77-27.136 to 77-27.137.02. Such amount shall be paid directly to the fund from which the loan was made.

Sec. 16. At any time after the first year the fund is effective and prior to federal fiscal year 2002 the state may: (1) Reserve up to thirty-three percent of a capitalization grant made pursuant to section 1452 of the federal Safe Drinking Water Act and add the funds reserved to any funds provided to the state pursuant to section 601 of the federal Water Pollution Control Act; and (2) reserve in any year a dollar amount up to the dollar amount that may be reserved under subdivision (1) of this section from the capitalization grants made pursuant to section 601 of the federal Water Pollution Control Act and add the reserved funds to any funds provided to the state pursuant to section 1452 of the federal Safe Drinking Water Act.

Sec. 17. Section 71-5301, Reissue Revised Statutes of Nebraska, is amended to read:

71-5301. As used in For purposes of the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

(1) Council shall mean means the Advisory Council on Public Water Supply;

(2) Director shall mean means the Director of Regulation and

Licensure or his or her authorized representative;

(3) Designated agent ~~shall mean means~~ any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the provisions of the Nebraska Safe Drinking Water Act and with whom which the ~~director~~ Director of Regulation and Licensure has consummated a legal and binding contract covering specifically delegated responsibilities;

(4) Major construction, extension, or alteration ~~shall mean means~~ those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but ~~shall does~~ not include the extension of service mains within established service areas;

(5) Operator ~~shall mean means~~ the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;

(6) Owner ~~shall mean means~~ any person owning or operating a public water supply system;

(7) Person ~~shall mean means~~ any individual, firm, partnership, limited liability company, association, company, corporation, political subdivision, or other entity;

(8) Water supply system ~~shall mean means~~ all sources of water and their surroundings under the control of one owner and ~~shall include~~ includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;

(9) Public water supply system ~~shall mean means~~ a water supply system designed to provide the public piped water fit for human consumption if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. This definition shall include, but not be limited to, (a) any collection, treatment, storage, or distribution facilities under control of the operator of such system and used primarily in connection with such system and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system the public water for human consumption if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Public water supply system includes, but is not limited to, (a) any collection, treatment, storage, or distribution facilities under control of the operator of such system and used primarily in connection with such system and (b) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. For purposes of this subdivision, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if (i) the water is used exclusively for purposes other than residential uses, such as drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public water supply system if the system or the residential or similar users of the system comply with subdivision (ii) or (iii) of this subdivision. A water supplier that would be a public water system only as a result of the amendments made by the 1996 amendments to the federal Safe Drinking Water Act shall not be considered a public water system until August 7, 1998;

(10) Drinking water standards ~~shall mean means~~ rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels for harmful materials which, in the judgment of the ~~director~~ Director of Regulation and Licensure, may have an adverse effect on the health of persons and (b) apply only to public water supply systems; and

(11) Lead free (a) when used with respect to solders and flux ~~shall mean means~~ solders and flux containing not more than two-tenths percent lead and (b) when used with respect to pipe and pipe fittings ~~shall mean means~~ pipe and pipe fittings containing not more than eight percent lead;

(12) Community water system ~~means~~ a public water supply system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five

year-round residents;

(13) Noncommunity water system means a public water supply system that is not a community water system;

(14) Nontransient noncommunity water system means a public water supply system that is not a community water supply system and that regularly serves at least twenty-five of the same individuals over six months per year; and

(15) Small system means a public water supply system that regularly serves less than ten thousand individuals.

Sec. 18. Section 71-5302, Reissue Revised Statutes of Nebraska, is amended to read:

71-5302. (1) The director Director of Regulation and Licensure shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water supply systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the director Director of Regulation and Licensure to be harmful to human health.

(2) The director Director of Regulation and Licensure may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water supply systems for chemical, radiological, physical, or bacteriological material determined by the director Director of Regulation and Licensure to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the director Director of Regulation and Licensure shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water supply system in the state, except that such standards shall not apply to a public water supply system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water supply system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The Director of Regulation and Licensure may adopt alternative monitoring requirements for public water supply systems in accordance with section 1418 of the federal Safe Drinking Water Act.

(6) The Director of Regulation and Licensure may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the Department of Health and Human Services Regulation and Licensure or the Department of Environmental Quality. In establishing the ranking system the Director of Regulation and Licensure shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, and assistance to systems most in need based upon affordability criteria adopted by the Director of Regulation and Licensure. This priority system shall be reviewed annually by the Director of Regulation and Licensure.

Sec. 19. Section 71-5304.01, Reissue Revised Statutes of Nebraska, is amended to read:

71-5304.01. (1) Whenever the director Director of Regulation and Licensure has reason to believe that a violation of any provision of the Nebraska Safe Drinking Water Act, any rule or regulation adopted and promulgated by the Department of Health and Human Services Regulation and Licensure under such act, or any term of a variance or exemption issued pursuant to section 71-5310 has occurred, he or she may cause an administrative order to be served upon the permittee or permittees alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation 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 the permittee or permittees named in the order request in writing a hearing before the director Director of Regulation and Licensure no later than thirty days after the date such order is served. In

lieu of such order, the director Director of Regulation and Licensure may require that the permittee or permittees appear before the director Director of Regulation and Licensure at a time and place specified in the notice and answer the charges. The notice shall be served on the permittee or permittees alleged to be in violation not less than thirty days before the time set for the hearing.

(2) Whenever the director Director of Regulation and Licensure finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a material which is determined by the director Director of Regulation and Licensure to be harmful or potentially harmful to human health, the director Director of Regulation and Licensure 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 Director of Regulation and Licensure deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the director Director of Regulation and Licensure, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director Director of Regulation and Licensure shall continue such order in effect, revoke it, or modify it.

(3) The director Director of Regulation and Licensure shall afford to the alleged violator an opportunity for a fair hearing before the department Department of Health and Human Services Regulation and Licensure under the Administrative Procedure Act.

(4) In addition to any other remedy provided by law, the Director of Regulation and Licensure may issue an order assessing an administrative penalty upon a violator.

(5) The range of administrative penalties assessed under this section for a public water supply system serving ten thousand or more persons shall be not less than one thousand dollars per day or part thereof for each violation, not to exceed twenty-five thousand dollars in the aggregate. Administrative penalties for a small system shall be not more than five hundred dollars per day or part thereof for each violation, not to exceed five thousand dollars in the aggregate. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm or potential harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, and any other factors which the department may reasonably deem relevant. The administrative penalty assessment shall state specific amounts to be paid for each violation identified in the order.

(6) An administrative penalty shall be paid within sixty days after the date of issuance of the order assessing the penalty. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for the penalty amount plus any statutory interest rate applicable to judgments. An order under this section imposing an administrative penalty may be appealed to the Director of Regulation and Licensure in the manner provided for in subsection (1) of this section. Any administrative penalty paid pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund. An action may be brought in the appropriate court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of the penalty.

Sec. 20. All new community water systems and new nontransient noncommunity water systems commencing operation after October 1, 1999, shall demonstrate technical, managerial, and financial capacity to operate under the Nebraska Safe Drinking Water Act.

The Director of Regulation and Licensure may adopt and promulgate rules and regulations to determine demonstration requirements for technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.

Sec. 21. The Department of Health and Human Services Regulation and Licensure shall develop a capacity development strategy to assist public water supply systems in acquiring and maintaining technical, managerial, and financial capacity pursuant to section 20 of this act. The department shall consider and solicit public comment on:

(1) The methods or criteria the department will use to identify and prioritize the public water supply systems most in need of improving technical, managerial, and financial capacity;

(2) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair capacity development;

(3) A description of how the department will:

(a) Assist public water supply systems in complying with the Nebraska Safe Drinking Water Act;

(b) Encourage the development of partnerships between public water supply systems to enhance the technical, managerial, and financial capacity of the systems; and

(c) Assist public water supply systems in the training and certification of operators; and

(4) A description of how the department will establish a baseline and measure improvements in capacity with respect to the act.

Sec. 22. The failure or inability of any public water supply system to receive funds under the Drinking Water State Revolving Fund Act or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with the Nebraska Safe Drinking Water Act and rules and regulations adopted and promulgated under the act.

Sec. 23. The Director of Regulation and Licensure shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the Director of Regulation and Licensure and the department.

Sec. 24. Section 71-5313, Reissue Revised Statutes of Nebraska, is amended to read:

71-5313. Sections 71-5301 to 71-5313 and sections 20 to 23 of this act shall be known and may be cited as the Nebraska Safe Drinking Water Act.

Sec. 25. Section 81-1505, Reissue Revised Statutes of Nebraska, is amended to read:

81-1505. (1) In order to carry out the purposes of the Environmental Protection Act and the Integrated Solid Waste Management Act, the council shall adopt and promulgate rules and regulations which shall set standards of air, water, and land quality to be applicable to the air, waters, and land of this state or portions thereof. Such standards of quality shall be such as to protect the public health and welfare. The council shall classify air, water, and land contaminant sources according to levels and types of discharges, emissions, and other characteristics which relate to air, water, and land pollution and may require reporting for any such class or classes. Such classifications and standards made pursuant to this section may be made for application to the state as a whole or to any designated area of the state and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Such standards and classifications may be amended as determined necessary by the council.

(2) In adopting the classifications of waters and water quality standards, the primary purpose for such classifications and standards shall be to protect the public health and welfare and the council shall give consideration to:

(a) The size, depth, surface area, or underground area covered, the volume, direction, and rate of flow, stream gradient, and temperature of the water;

(b) The character of the area affected by such classification or standards, its peculiar suitability for particular purposes, conserving the value of the area, and encouraging the most appropriate use of lands within such area for domestic, agricultural, industrial, recreational, and aquatic life purposes;

(c) The uses which have been made, are being made, or are likely to be made, of such waters for agricultural, transportation, domestic, and industrial consumption, for fishing and aquatic culture, for the disposal of sewage, industrial waste, and other wastes, or other uses within this state and, at the discretion of the council, any such uses in another state on interstate waters flowing through or originating in this state;

(d) The extent of present pollution or contamination of such waters which has already occurred or resulted from past discharges therein; and

(e) Procedures pursuant to section 401 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., for certification by the department of activities requiring a federal license or permit which may result in a discharge.

(3) In adopting effluent limitations or prohibitions, the council shall give consideration to the type, class, or category of discharges and the quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable or other waters of the state, including schedules of compliance, best practicable control technology, and best available control technology.

(4) In adopting standards of performance, the council shall give

consideration to the discharge of pollutants which reflect the greatest degree of effluent reduction which the council determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

(5) In adopting toxic pollutant standards and limitations, the council shall give consideration to the combinations of pollutants, the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms.

(6) In adopting pretreatment standards, the council shall give consideration to the prohibitions or limitations to noncompatible pollutants, prohibitions against the passage through a publicly owned treatment works of pollutants which would cause interference with or obstruction to the operation of publicly owned treatment works, damage to such works, and the prevention of the discharge of pollutants therefrom which are inadequately treated.

(7) In adopting treatment standards, the council shall give consideration to providing for processes to which wastewater shall be subjected in a publicly owned wastewater treatment works in order to make such wastewater suitable for subsequent use.

(8) In adopting regulations pertaining to the disposal of domestic and industrial liquid wastes, the council shall give consideration to the minimum amount of biochemical oxygen demand, suspended solids, or equivalent in the case of industrial wastewaters, which must be removed from the wastewaters and the degree of disinfection necessary to meet water quality standards with respect to construction, installation, change of, alterations in, or additions to any wastewater treatment works or disposal systems, including issuance of permits and proper abandonment, and requirements necessary for proper operation and maintenance thereof.

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

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

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

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

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

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

(b) The council shall establish fees for regulated activities and facilities and for permits for such activities and facilities. The fees shall be sufficient but shall not exceed the amount necessary to pay the department for the direct and indirect costs of evaluating, processing, and monitoring during and after operation of regulated facilities or performance of regulated activities.

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

The rules and regulations adopted and promulgated may also provide

for issuance of a commercial permit after a finding by the department that the injection and restoration procedures authorized by the research and development permit have been successful in demonstrating the applicant's ability to inject and restore in a manner which meets the standards required by this subsection and the rules and regulations.

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

(10) In adopting livestock waste control regulations, the council shall consider the discharge of livestock wastes into the waters of the state or onto land not owned by the livestock operator, conditions under which permits for such operations may be issued, including design, location, and proper management of such facilities, protection of ground water from such operations, and revocation, modification, or suspension of such permits for cause.

(11) In adopting regulations for the issuance of permits under the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the council shall consider when such permits shall be required and exemptions, application and filing requirements, terms and conditions affecting such permits, notice and public participation, duration and review of such permits, and monitoring, recording, and reporting under the system.

(12) The council shall adopt and promulgate rules and regulations for air pollution control which shall include:

(a) A construction permit program which requires the owner or operator of an air contaminant source to obtain a permit prior to construction;

(b) An operating permit program consistent with requirements of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and an operating permit program for minor sources of air pollution, which programs shall require permits for both new and existing sources;

(c) Provisions for operating permits to be issued after public notice, to be terminated, modified, or revoked for cause, and to be modified to incorporate new requirements;

(d) Provisions for applications to be on forms provided by the department and to contain information necessary to make a determination on the appropriateness of issuance or denial. The department shall make a completeness determination in a timely fashion and after such determination shall act on the application within time limits set by the council. Applications for operating permits shall include provisions for certification of compliance by the applicant;

(e) Requirements for operating permits which may include such conditions as necessary to protect public health and welfare, including, but not limited to (i) monitoring and reporting requirements on all sources subject to the permit, (ii) payment of annual fees sufficient to pay the reasonable direct and indirect costs of developing and administering the air quality permit program, (iii) retention of records, (iv) compliance with all air quality standards, (v) a permit term of no more than five years from date of issuance, (vi) any applicable schedule of compliance leading to compliance with air quality regulations, (vii) site access to the department for inspection of the facility and records, (viii) emission limits or control technology requirements, (ix) periodic compliance certification, and (x) other conditions necessary to carry out the purposes of the Environmental Protection Act. For purposes of this subsection, control technology shall mean a design, equipment, a work practice, an operational standard which may include a requirement for operator training or certification, or any combination thereof;

(f) Classification of air quality control regions;

(g) Standards for air quality that may be established based upon protection of public health and welfare, emission limitations established by the United States Environmental Protection Agency, and maximum achievable control technology standards for sources of toxic air pollutants. For purposes of this subdivision, maximum achievable control technology standards shall mean an emission limit or control technology standard which requires the maximum degree of emission reduction that the council, taking into consideration the cost of achieving such emission reduction, any health and environmental impacts not related to air quality, and energy requirements, determines is achievable for new or existing sources in the category or

subcategory to which the standard applies through application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which accomplish one or a combination of the following:

- (i) Reduce the volume of or eliminate emissions of the pollutants through process changes, substitution of materials, or other modifications;
- (ii) Enclose systems or processes to eliminate emissions; or
- (iii) Collect, capture, or treat the pollutants when released from a process, stack, storage, or fugitive emission point;
- (h) Restrictions on open burning and fugitive emissions;
- (i) Provisions for issuance of general operating permits, after public notice, for sources with similar operating conditions and for revoking such general authority to specific permittees;
- (j) Provisions for implementation of the sulfur dioxide allowance system of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., through the operating permit program;
- (k) A provision that operating permits will not be issued if the Environmental Protection Agency objects in a timely manner;
- (l) Provisions for periodic reporting of emissions;
- (m) Limitations on emissions from process operations, fuel-burning equipment, and incinerator emissions and such other restrictions on emissions as are necessary to protect the public health and welfare;
- (n) Time schedules for compliance;
- (o) Requirements for owner or operator testing and monitoring of emissions;
- (p) Control technology requirements when it is not feasible to prescribe or enforce an emission standard; and
- (q) Procedures and definitions necessary to carry out payment of the annual emission fee set in section 81-1505.04.

(13)(a) In adopting regulations for hazardous waste management, the council shall give consideration to generation of hazardous wastes, labeling practices, containers used, treatment, storage, collection, transportation including a manifest system, processing, resource recovery, and disposal of hazardous wastes. It shall consider the permitting, licensing, design and construction, and development and operational plans for hazardous waste treatment, storage, and disposal facilities, and conditions for licensing or permitting of hazardous waste treatment, storage, and disposal areas. It shall consider modification, suspension, or revocation of such licenses and permits, including requirements for waste analysis, site improvements, fire prevention, safety, security, restricted access, and covering and handling of hazardous liquids and materials. Licenses and permits for hazardous waste, treatment, storage, and disposal facilities shall not be issued until certification by the State Fire Marshal as to fire prevention and fire safety has been received by the department. The council shall further consider the need at treatment, storage, or disposal facilities for required equipment, communications and alarms, personnel training, and contingency plans for any emergencies that might arise and for a coordinator during such emergencies.

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

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

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

(b) In adopting regulations for hazardous waste management, the council shall consider, in addition to criteria in subdivision (a) of this subsection, establishing criteria for (i) identifying hazardous waste including extraction procedures, toxicity, persistence, and degradability in nature, potential for accumulation in tissue, flammability or ignitability, corrosiveness, reactivity, and generation of pressure through decomposition, heat, or other means, and other hazardous characteristics, (ii) listing all materials it deems hazardous and which should be subject to regulation, and

(iii) locating treatment, storage, or disposal facilities for such wastes. In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b)(1) of this subsection, no regulation shall be adopted without the approval of the State Fire Marshal.

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

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

(14) In adopting regulations governing discharges or emissions of oil and other hazardous materials into the waters, in the air, or upon the land of the state, the council shall consider the requirements of the Integrated Solid Waste Management Act, methods for prevention of such discharges or emissions, and the responsibility of the discharger or emitter for cleanup, toxicity, degradability, and dispersal characteristics of the substance.

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

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

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

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

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

(e) Renewal of permits if the operation has been in substantial compliance with composting regulations adopted pursuant to this subsection, permit conditions, and operational plans;

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

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

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

(i) Exemptions from permits of the department; and

(j) The Integrated Solid Waste Management Act.

(16) Any person operating or responsible for the operation of air, water, or land contaminant sources of any class for which the rules and regulations of the council require reporting shall make reports containing information as may be required by the department concerning quality and quantity of discharges and emissions, location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of discharges and emissions, and such other information as is relevant to air, water, or land pollution and is available.

(17) Prior to adopting, amending, or repealing standards and classifications of air, water, and land quality and rules and regulations under the Integrated Solid Waste Management Act, the council shall, after due

notice, conduct public hearings thereon. Notice of public hearings shall specify the waters or the area of the state for which standards of air, water, or land are sought to be adopted, amended, or repealed and the time, date, and place of such hearing. Such hearing shall be held in the general area to be affected by such standards. Copies of such notice shall be:

(a) Published at least twice in a newspaper regularly published or circulated in a county or counties bordering or through which flow the waters or the atmosphere of which is affected, or the particular portion of land which is affected, for which standards are sought to be adopted. The first date of publication shall not be more than thirty days nor less than twenty days before the date fixed for such hearing; and

(b) Mailed at least twenty days before such hearing to such persons and political subdivisions as the council has reason to believe may be affected by the proposed standards.

(18) Standards of quality of the air, water, or land of the state and rules and regulations adopted under the Integrated Solid Waste Management Act or any amendment or repeal of such standards or rules and regulations shall become effective upon adoption by the council and filing in the office of the Secretary of State. In adopting standards of air, water, and land quality or making any amendment thereof, the council shall specify a reasonable time for persons discharging wastes into the air, water, or land of the state to comply with such standards and upon the expiration of any such period of time may revoke or modify any permit previously issued which authorizes the discharge of wastes into the air, water, or land of this state which results in reducing the quality of such air, water, or land below the standards established therefor by the council.

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

(20) In addition to such standards as are heretofore authorized, the council shall adopt and promulgate rules and regulations to set standards of performance, effluent standards, pretreatment standards, treatment standards, toxic pollutant standards and limitations, effluent limitations, effluent prohibitions, and quantitative limitations or concentrations which shall in all respects conform with and meet the requirements of the National Pollutant Discharge Elimination System in the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

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

(b) Proof of financial responsibility shall include any of the following made payable to or held in trust for the benefit of the state and approved by the department:

(i) A surety bond executed by the applicant and a corporate surety licensed to do business in this state;

(ii) A deposit of cash, negotiable bonds of the United States or the state, negotiable certificates of deposit, or an irrevocable letter of credit of any bank or other savings institution organized or transacting business in the United States in an amount or which has a market value equal to or greater than the amount of the bonds required for the bonded area under the same terms and conditions upon which surety bonds are deposited;

(iii) An established escrow account; or

(iv) A bond of the applicant without separate surety upon a satisfactory demonstration to the director that such applicant has the financial means sufficient to self-bond pursuant to bonding requirements adopted by the council consistent with the purposes of this subdivision.

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

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

This subsection shall apply to hazardous waste treatment, storage, or disposal facilities which have received interim status.

(22) The council shall adopt and promulgate rules and regulations no more stringent than the provisions of section 1453 et seq. of the federal Safe Drinking Water Act for public water supply system source water assessment programs.

The council may adopt and promulgate rules and regulations to implement a source water petition program no more stringent than section 1454 et seq. of the federal Safe Drinking Water Act.

Sec. 26. Original sections 66-1510, 66-1518, 71-5301, 71-5302, 71-5304.01, 71-5313, and 81-1505, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 27. Since an emergency exists, this act takes effect when passed and approved according to law.