

LEGISLATIVE BILL 538

Approved by the Governor May 21, 1973

Introduced by Agriculture and Environment Committee,
Schmit, 23, Chmn.; Kennedy, 21; C. Carsten,
2; Kime, 43; R. Maresh, 32

AN ACT to amend sections 81-1502, 81-1505, and 81-1508,
Revised Statutes Supplement, 1972, relating to
environmental control; to provide definitions;
to provide powers for the Environmental
Control Council; to provide penalties; 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 81-1502, Revised
Statutes Supplement, 1972, be amended to read as follows:

81-1502. As used in sections 81-1501 to 81-1532,
unless the context otherwise requires:

(1) Air contaminant or air contamination shall
mean the presence in the outdoor atmosphere of any dust,
fume, mist, smoke, vapor, gas, or other gaseous fluid, or
particulate substance differing in composition from or
exceeding in concentration the natural components of the
atmosphere;

(2) Air pollution shall mean the presence in the
outdoor atmosphere of one or more air contaminants or
combinations thereof in such quantities and of such
duration as are or may tend to be injurious to human,
plant, or animal life, or property, or the conduct of
business;

(3) Chairman shall mean the chairman of the
Environmental Control Council, and council shall mean the
Environmental Control Council;

(4) Complaint shall mean any charge, however,
informal, to or by the council, that any person or
agency, private or public, is polluting the air, land, or
water or is violating the provisions of sections 81-1501
to 81-1532 or any rule or regulation of the council in
respect thereof;

(5) Control and controlling shall include
prohibition and prohibiting as related to air, land, or
water pollution;

(6) Department shall mean the Department of Environmental Control, which department is hereby created;

(7) Director shall mean the Director of Environmental Control, which position is hereby established;

(8) Disposal system shall mean a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems and treatment works, disposal wells and fields, and other systems;

(9) Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof;

(10) Person shall mean any individual, partnership, association, public or private corporation, trustee, receiver, assignee, agent, municipality or other governmental subdivision, public agency, officer or governing or managing body of any municipality, governmental subdivision or public agency, or any other legal entity except the Department of Environmental Control;

(11) Rule or regulation shall mean any rule or regulation of the department;

(12) Sewerage system shall mean pipe lines, conduits, pumping stations, and force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(13) Treatment works shall mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes;

(14) Wastes shall mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the state;

(15) Refuse shall mean putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings and solid market and industrial wastes;

(16) Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit or vegetable matter used or intended for food or that attend

the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables, and dead animals rejected by rendering plants;

(17) Rubbish shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety;

(18) Junk shall mean old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material;

(19) Land pollution shall mean the presence upon or within the land resources of the state of one or more contaminants or combinations thereof, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance; (b) be harmful, detrimental or injurious to public health, safety or welfare; (c) be injurious to plant and animal life and property; or (d) be detrimental to the economic and social development, the scenic beauty or the enjoyment of the natural attractions of the state;

(20) Water pollution shall mean ~~contamination--or other-alteration-of-the-physical,-chemical,-or-biological properties-of-any-waters-of-the-state,-including-change in-temperature,-taste,-color,-turbidity,-or-odor--of--the waters-or-such-discharge-of-any-liquid,-gaseous,-solid, radioactive,-or-other-substance-into-any-waters--of--the state-as-will-or-is-likely-to-create-a-nuisance-or-render such-waters-harmful,-detrimental-or-injurious--to--public health,-safety-or-welfare,-or--to--domestic,-commercial, industrial,-agricultural,-recreational---or---other legitimate--beneficial--uses,-or--to---livestock,-wild animals,-birds,-fish-or-other-aquatic-life,-or--degrade the-water-from-its--intended--use,-and the manmade or man-induced alteration of the chemical, physical, biological, and radiological integrity of water;~~

(21) Waters of the state shall mean all waters within the jurisdiction of this state including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state; =

(22) Point source shall mean any discernible confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(23) Effluent limitation shall mean any restriction established by the council on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state, including schedules of compliance; and

(24) Schedule of compliance shall mean a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

Sec. 2. That section 81-1505, Revised Statutes Supplement, 1972, be amended to read as follows:

81-1505. (1) In order to carry out the purposes of sections 81-1501 to 81-1532, the council shall adopt 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 and the present and prospective future use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. The council shall classify air, water and land contaminant sources according to levels and types of 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 subsection 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) 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 location, size and height of contaminant outlets, processes employed, fuels used and the nature

and time periods or duration of emissions, and such other information as is relevant to air, water or land pollution and is available.

(3) Prior to adopting, amending, or repealing standards and classifications of air, water and land quality, 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.

(4) Standards of quality of the air, waters or land of the state or any amendment or repeal thereof 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, waters or land of the state to comply with such standards and upon the expiration of any such period of time shall revoke or modify any permit previously issued which authorizes the discharge of wastes into the air, waters or land of this state which result in reducing the quality of such air, waters or land below the standards established therefor by the council.

(5) All standards of quality of air, waters or land adopted pursuant to law prior to May 26, 1971 and applicable to specified air, waters or land are hereby approved and adopted as standards of quality of such air, waters or land.

(6) In addition to such standards as are heretofore authorized, the council shall adopt 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 Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

Sec. 3. That section 81-1508, Revised Statutes Supplement, 1972, be amended to read as follows:

81-1508. (1) Any person who shall violate any of the provisions of sections 81-1501 to 81-1532, or who fails to perform any duty imposed by the provisions of sections 81-1501 to 81-1532 shall:

(a) For any violation except of a permit or permit condition or limitation pursuant to the National Pollutant Discharge Elimination System, Public Law 92-500, 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 violates the provisions of or fails to perform any of the duties imposed by sections 81-1501 to 81-1532, and in default of the payment of such fine and costs the person, and 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, effluent standards and limitations, for failure to obtain a permit or meet the filing requirements therefor, discharging without a permit or for violation of a permit or any permit condition or limitation under the National Pollutant Discharge Elimination System, Public Law 92-500, 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, violation of any effluent standards and limitations, filing requirements, monitoring requirements, or water

quality standards, or 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, Public Law 92-500, 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; and

(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, Public Law 92-500, 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.

(2) Any person who violates any of the provisions of sections 81-1501 to 81-1532 or fails to perform any duty imposed by sections 81-1501 to 81-1532 or any regulation issued under sections 81-1501 to 81-1532 or who violates any order or determination of the director promulgated pursuant to sections 81-1501 to 81-1532, 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 such violation or failure to perform any duty imposed by sections 81-1501 to 81-1532 occurred.

~~(3) The Attorney General, at the request of the director, may bring an action to enjoin any violation of the provisions of sections 81-1501 to 81-1532 or any order or determination of the director. In any action for an injunction brought pursuant to this section, any finding of the director after hearing or due notice shall be prima facie evidence of the fact or facts found therein without showing the lack of an adequate remedy at law.~~

(3) In addition to the penalties provided by this section, the director, whenever he has reason to believe that any person, firm, or corporation is violating any provision of sections 81-1501 to 81-1532, any regulation

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 provisions of Chapter 81, article 15.

Sec. 4. That original sections 81-1502, 81-1505, and 81-1508, Revised Statutes Supplement, 1972, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.