

LEGISLATIVE BILL 356

Approved by the Governor May 25, 1983

Introduced by Cullan, 49

AN ACT relating to environmental control; to amend sections 81-1502, 81-1503, 81-1504, 81-1505, 81-1506, 81-1508, and 81-1532, Reissue Revised Statutes of Nebraska, 1943, and section 57-905, Revised Statutes Supplement, 1982; to define terms; to change provisions relating to the Director of Environmental Control; to provide additional powers for the Department of Environmental Control; to authorize regulations relating to certain holes and wells as prescribed; to create a fund; to change provisions relating to plans, specifications, and information; to provide penalties; to provide for a tax; to provide additional powers and duties of the Tax Commissioner; to provide additional powers to the district court; to harmonize provisions; to provide operative dates; 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 57-905, Revised Statutes Supplement, 1982, be amended to read as follows:

57-905. (1) The commission shall have jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of sections 57-901 to 57-921.

(2) The commission shall have authority, and it is its duty, to make such investigations as it deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the commission.

(3) The commission shall have authority to require: (a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the production of oil and gas; (b) the making and filing of directional surveys, and reports on

well location, drilling, and production within six months after the completion or abandonment of the well; (c) the drilling, casing, operating, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, the pollution of fresh water supplies by oil, gas, or salt water, and to prevent blowouts, cave-ins, seepages, and fires; (d) the furnishing of a reasonable bond with good and sufficient surety, conditioned for the performance of the duty to comply with all the provisions of the laws of the State of Nebraska and the rules, regulations, and orders of the commission; (e) that the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured; (f) the operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios; (g) metering or other measuring of oil, gas, or product in pipelines or gathering systems; (h) that every person who produces or purchases oil or gas in this state shall keep and maintain or cause to be kept and maintained for a five-year period complete and accurate records of the quantities thereof, which records shall be available for examination by the commission or its agents at all reasonable times, and that every such person file with the commission such reports as it may reasonably prescribe with respect to such oil or gas or the products thereof; and (i) that upon written request of any person, geologic information, well logs, drilling samples, and other proprietary information filed with the commission in compliance with sections 57-901 to 57-921, or any rule, regulation, or order of the commission, may be held confidential for a period of not more than twelve months.

(4) The commission shall have authority in order to prevent waste, to regulate: (a) The drilling, producing and plugging of wells, or test holes, and all other operations for the production of oil or gas; (b) the shooting and chemical treatment of wells; (c) the spacing of wells; (d) operations to increase ultimate recovery such as, but without limitation, the cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and (e) disposal of oilfield wastes, including salt water.

(5) The commission shall not have authority to limit the production of oil or gas, or both, from any pool or field except to prevent waste therein.

(6) The commission shall have authority to classify wells as oil or gas wells for purposes material to the interpretation or enforcement of the provisions of sections 57-901 to 57-921.

(7) The commission shall have authority to

promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of sections 57-901 to 57-921.

(8) The commission, with the approval of the Governor, shall have authority to establish and maintain its principal office and its books, papers, and records at such place in the state as it shall determine. The commission shall not have authority to purchase its principal office quarters.

(9) The commission shall have authority to require that all wells drilled for oil and gas shall be adequately logged with mechanical-electrical logging devices, and to require the filing of logs.

(10) The commission shall have the authority to regulate the drilling and plugging of seismic and stratigraphic tests in oil, and gas, and mineral exploration holes.

(11) The commission shall have the authority to act as the state jurisdictional agency pursuant to the Natural Gas Policy Act, P.L. 95-621, 92 Stat. 3350.

(12) The commission shall have the authority to have one or more examiners, who are employees of the commission, conduct any of its hearings, investigations, and examinations authorized by sections 57-901 to 57-921. Such examiner may exercise the commission's powers including, but not limited to, the taking of evidence and testimony under oath, resolving questions of fact and questions of law, and the entering of an order. Such order shall be entered in the commission's order journal. Any person having an interest in property affected by an order issued by an examiner and who is dissatisfied with such order may appeal to the commission by filing a petition on appeal to the commission within fifteen days of the entering of the examiner's order. Such person shall provide notice to all interested persons by personal service or registered or certified United States mail with return receipt, requiring such parties to answer within fifteen days from the date of service. Upon appeal, the commission shall hear the case de novo on the record and shall not be bound by any conclusions of the examiner. The commission shall hold a hearing on the appeal within forty-five days of the filing of an appeal to the commission and issue its order within fifteen days after the hearing. The commission shall review all orders issued by an examiner that are not appealed and issue an order concerning the examiner's order within sixty days after the examiner's order. The commission shall adopt, amend, or reject the examiner's order. Any order of an examiner which is not appealed to the commission and which the commission adopts shall not be appealable to the district court unless the commission adopts an order

before the end of the time for appeal to the commission.
 Sec. 2. That section 81-1502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1502. As used in sections ~~81-1504 to 81-1533~~ the Environmental Protection Act, and 81-1524 to 81-1527, 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) Chairperson shall mean the chairperson 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 81-1533 or any rule or regulation of the department 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 pipelines, 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 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;

(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;

(25) Hazardous waste shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;

(26) Solid waste shall mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or naturally occurring or accelerated produced radioactive material as defined in the Nebraska radiological health regulations or source, special nuclear, or by-product byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(27) Storage, when used in connection with hazardous waste, shall mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste, except by those generators who

store their own waste on site for less than ninety days for subsequent disposal, recovery, or reuse;

(28) Manifest shall mean the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage; and

(29) Processing shall mean to treat, detoxify, neutralize, incinerate, biodegrade, or otherwise process a hazardous waste to remove such waste's harmful properties or characteristics for disposal in accordance with regulations established by the council;

(30) Well shall mean a bored, drilled, or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension of such shaft or hole;

(31) Injection well shall mean a well into which fluids are injected;

(32) Fluid shall mean a material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

(33) Mineral production well shall mean a well drilled to promote extraction of mineral resources or energy including, but not limited to, a well designed for (a) mining of sulfur by the Frasch process, (b) solution mining of sodium chloride, potash, phosphate, copper, uranium, or any other mineral which can be mined by this process, (c) in-situ combustion of coal, tar sands, oil shale, or any other fossil fuel, or (d) recovery of geothermal energy for the production of electric power. Mineral production well shall not include any well designed for conventional oil or gas production, for use of fluids to promote enhanced recovery of oil or natural gas, or for injection of hydrocarbons for storage purposes; and

(34) Mineral exploration hole shall mean a hole bored, drilled, driven, or dug in the act of exploring for a mineral other than oil and gas.

Sec. 3. That section 81-1503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1503. (1) The Environmental Control Council is hereby created. The council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows: One representative of the food products manufacturing industry, one representative of conservation, one representative of the agricultural processing industry, one representative of the automotive or petroleum industry, one representative of the chemical industry, one representative of heavy industry, one representative of the power generating industry, one representative of agriculture actively engaged in crop production, one representative of labor, one professional engineer

experienced in control of air and water pollution and solid wastes, one physician knowledgeable in the health aspects of air, water, and land pollution, one representative from county government, two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class, one representative of the livestock industry, and one representative of the public at large.

(2) Within thirty days after May 26, 1971, the Governor shall appoint the initial sixteen members to be appointed by him or her. Members shall serve for terms of four years, except that of the members first appointed, eight shall be appointed for terms of two years and eight shall be appointed for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made. As the terms of the initial appointees to the council expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors shall be appointed to four-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. All members shall be citizens and residents of the State of Nebraska.

(3) Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording him or her an opportunity to be publicly heard in person, or by counsel, in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. When a member is removed, the Governor shall file, in the office of the Secretary of State, a complete statement of all charges made against such member and the findings thereon, together with a complete record of the proceedings.

(4) The council shall elect from its members a chairperson and a vice-chairperson, who shall hold office at the pleasure of the council. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson. The director shall serve as secretary of the council and shall keep all records of meetings of and actions taken by the council. He or she shall be promptly advised as to such actions by the chairperson.

(5) The members of the council, while engaged in the performance of their official duties, shall receive compensation at the rate of forty dollars per day while so serving, including travel time. In

addition, members of the council shall receive reimbursement for actual and necessary expenses as provided in sections 84-306.01 to 84-306.05 for state employees.

(6) The council shall hold at least four meetings, once each calendar quarter at a time and place fixed by the council and shall keep a record of its proceedings, which shall be open to the public for inspection. Special meetings may be called by the chairperson. Such special meetings must be called by him or her upon receipt of a written request signed by two or more members of the council. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the council by the secretary. The majority of the members of the council shall constitute a quorum.

(7) The council shall submit to the Governor a list of names from which he or she shall appoint the Director of Environmental Control, who shall be experienced in air, water, and land pollution control, and who may be otherwise an employee of the state government. The director shall be responsible for administration of the department and all standards, rules, and regulations adopted pursuant to Chapter 81, article 15. All such standards, rules, and regulations shall be adopted by the council, after consideration of the recommendations of the director. All grants to political subdivisions under the control of the department shall be made by the director in accordance with priorities established by the council. A majority of the members of the council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the council shall be necessary for the adoption of standards, rules, and regulations.

(8) Before the director shall enter upon the duties of his or her office, he or she shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear and affirm that he or she holds no other public office nor any position under any political committee or party and that he or she has not during the two years immediately prior to his or her appointment received a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under the provisions of sections 84-4504 to 84-4532 Environmental Protection Act and that he or she will not receive such income during his or her term as director, except that such requirements regarding income prior to the term of office shall not apply to employees of any agency of the State of Nebraska or any political subdivision which may be a permit holder under the Environmental Protection Act. Such oath and affirmation shall be filed with the

Secretary of State.

Sec. 4. That section 81-1504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1504. The department shall have and may exercise the following powers and duties:

(1) To exercise exclusive general supervision of the administration and enforcement of the provisions of sections ~~81-1504 to 81-1533~~ Environmental Protection Act and ~~81-1524-04 to 81-1524-06~~; and all rules and regulations and orders promulgated thereunder;

(2) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the air, waters, and land of the state;

(3) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of sections ~~81-1504 to 81-1533~~ the Environmental Protection Act; and ~~81-1524-04 to 81-1524-06~~;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the federal Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(5) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air, land, and water pollution and causes and effects, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under sections ~~81-1504 to 81-1533~~ the Environmental Protection Act, and ~~81-1524-04 to 81-1524-06~~; using its own staff or by using private research organizations under contract;

(6) To collect and disseminate information and conduct educational and training programs relating to air, water, and land pollution and the prevention, control, and abatement thereof;

(7) To issue, modify, or revoke orders: (a) Prohibiting or abating discharges of wastes into the air, waters, or land of the state; and (b) requiring the construction of new disposal systems or any parts thereof or the modification, extension of or the adoption of other remedial measures to prevent, control, or abate pollution;

(8) To administer state grants to political

subdivisions for solid waste disposal facilities and for the construction of sewage treatment works and facilities to dispose of water treatment plant wastes;

(9) To (a) hold such hearings and give notice thereof, (b) issue such subpoenas requiring the attendance of such witnesses and the production of such evidence, (c) administer such oaths, and (d) take such testimony as the director deems necessary, and any of these powers may be exercised on behalf of the director by a hearing officer designated by him or her;

(10) To require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by sections 84-1504 to 84-1533 the Environmental Protection Act; and 84-1524-04 to 84-1524-06;

(11) To issue, continue in effect, revoke, modify, or deny permits, under such conditions as the director may prescribe, consistent with the standards, rules, and regulations adopted by the council, to prevent, control, or abate pollution, or for the discharge of wastes into the air, land, or waters of the state, and for the installation, modification, or operation of disposal systems or any parts thereof;

(12) To require proper maintenance and operation of disposal systems;

(13) To exercise all incidental powers necessary to carry out the purposes of sections 84-1504 to 84-1533 the Environmental Protection Act; and 84-1524-04 to 84-1524-06;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, mining and land quality, and solid wastes, to be administered by full-time salaried bureau, division or section chiefs, and to delegate and assign to each such bureau, division, or section and the officers and employees therein, the duties and powers granted to the department for the enforcement of the provisions of Chapter 81, article 15, and the standards, rules, and regulations adopted pursuant thereto;

(15) To require access to existing and available records relating to or monitoring of emissions or discharges which cause or contribute to air, land, or water pollution;

(16) To obtain such scientific, technical, administrative, and operational services including laboratory facilities, by contract or otherwise, as the director deems necessary;

(17) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of sections 84-1504 to 84-1533 the Environmental Protection Act; and 84-1524-04 to 84-1524-06;

(18) To encourage local units of government to handle air, land, and water pollution problems within their respective jurisdictions and on a cooperative basis, and to provide technical and consultative assistance therefor;

(19) To consult, upon the request of any person proposing to construct, install, or otherwise acquire an air, land, or water contaminant source or device or system for control thereof, with such person concerning the efficacy of such device or system, or the air, land, or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with ~~sections 84-4504 to 84-4533~~ the Environmental Protection Act, and ~~84-4524-04 to 84-4524-06,~~ rules and regulations in force pursuant thereto, or any other provision of law;

(20) To require all persons engaged or desiring to engage in operations which result or which may result in air, water, or land pollution to secure a permit prior to installation or operation or continued operation;

(21) To enter and inspect, during reasonable hours, any building or place, except a building designed for and used exclusively for a private residence;

(22) To receive or initiate complaints of air, water, or land pollution, hold hearings in connection with air, water, or land pollution and institute legal proceedings in the name of the state for the control or prevention of air, water, or land pollution and for the recovery of penalties, in accordance with ~~sections 84-4504 to 84-4533~~ the Environmental Protection Act;

(23) To delegate, by contract with governmental subdivisions which have adopted local air, water, or land pollution control programs approved by the council, the enforcement of state-adopted air, water, or land pollution control regulations within a specified region surrounding the jurisdictional area of the governmental subdivisions. Prosecutions ; Provided, prosecutions commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in ~~sections 84-4504 to 84-4533~~ the Environmental Protection Act;

(24) To conduct tests and take samples of air, water, or land contaminants, fuel, process materials, or any other substance which affects or may affect discharges or emissions of air, water, or land contaminants from any source, giving the owner or operator a receipt for the sample obtained;

(25) To develop and enforce compliance schedules under such conditions as the director may prescribe, consistent with the standards, rules, and regulations adopted by the council, to prevent, control,

or abate pollution;

(26) To employ the Governor's Keep Nebraska Beautiful Committee for such special occasions and projects as the department may decide and reimbursement of the committee shall be made from state and appropriate federal matching funds for each assignment of work by the department as provided in sections 84-306.01 to 84-306.05 for state employees;

(27) To require the owners or operators of a major new or modified stationary air pollution source under the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., to pay a permit fee when the application therefor cannot be processed in a routine manner. Such fee shall not exceed the cost of the engineering review, any public hearings held, and any other nonroutine expenses in connection with the issuance or denial of such permit;

(28) To provide, to the extent determined by the council to be necessary and practicable, for areawide, selective, and periodic inspection and testing of motor vehicles to secure compliance with applicable exhaust emission standards for a fee not to exceed five dollars to offset the cost of inspection; and

(29) To enforce, when it is not feasible to prescribe or enforce any emission standard for control of air pollutants, the use of a design, equipment, a work practice, or an operational standard, or combination thereof, which is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety.

Sec. 5. That section 81-1505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1505. (1) In order to carry out the purposes of sections ~~81-1504~~ to ~~81-1533~~ the Environmental Protection Act, and ~~81-1521-04~~ to ~~81-1524-06~~, 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. 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 standards shall be to protect the public health and welfare, and the council shall give consideration to:

(a) The size, depth, surface, 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, or 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; and (d) the extent of present pollution or contamination of such waters which has already occurred or resulted from past discharges therein.

(3) In adopting effluent limitations or prohibitions the council shall give consideration to the type, class, or category of discharges, 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, where 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 publicly

owned treatment works of pollutants which would cause interference with or obstruction to the operation of publicly-owned 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 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, the degree of disinfection necessary to meet water quality standards, the requirements of section 81-1506 (2)(c) and (3) with respect to installation, change, alterations in or additions to any wastewater treatment works, and requirements necessary for proper maintenance thereof.

(9) In adopting regulations to control the erection, modification, commencement, alteration, or operation of disposal wells to protect ground water and other subsurface resources of the state, the council shall give consideration to the effects on water quality of ground water; general conditions such as location; geologic formations; topography; industry; agriculture; population densities; wildlife; fish and other aquatic life; mineral and water resources; an evaluation of geologic and hydrologic conditions; design specifications of the proposed well; the disposal system; an evaluation of the injection zone; specifications for surface equipment design and conditions under which abandonment of such a well will be allowed: (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 a schedule of 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 costs of evaluating, processing, and monitoring during and after operation of regulated facilities or performance of regulated activities.

(c) The council shall adopt and promulgate rules and regulations requiring performance bonds or financial surety for regulated activities or facilities which may endanger public health and welfare or air, land, water, or subsurface resources. Individual bond or financial surety amounts shall be set by the director at levels reasonable and necessary for reliable performance of duties and responsibilities specifically required by law, rule, and regulation. Such bond amounts shall be sufficient to allow the department to perform restoration activities at any time due to failure of the applicant to perform the required restoration.

(d) 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 sub-surface 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 subsection (9) of this section and the rules and regulations adopted pursuant to such subsection.

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 subsection (9) of this section and the rules and regulations adopted pursuant to such subsection.

(e) For the purpose of subsection (9) of this section, 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 federal Clean Water Act, 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) In adopting air pollution control regulations the council shall consider classification of air quality control regions, reporting of emissions, when permits shall be required for new and complex sources, limitations on emissions from existing process operations and existing fuel-burning equipment, incinerator emissions, and such other emissions restrictions as are necessary to protect the public health and welfare, when exceptions will be allowed, establishment of time schedules for compliance, measurement of emissions, and provisions for emergency air episodes. The council shall also provide, to the extent it determines necessary and practicable, for areawide, selective, and periodic inspection and testing of motor vehicles to insure compliance with applicable emission standards for a fee not to exceed five dollars

to offset the increased cost of inspection, and the council may, when it is not feasible to prescribe or enforce an emission standard for control of air pollutants, adopt a design, equipment, work practice, or operational standard, or any combination thereof, which is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety. As part of such standard the council shall adopt such requirements as will assure the proper operation and maintenance of any element of design or equipment.

(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, 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 this 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 if any such facility is constructed subsequent to six months after May 29, 1981. In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b) (i) 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 consider establishing 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 feet 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. Upon receipt of any such remittance, the State Treasurer shall deposit the entire amount thereof in the state General Fund; and

(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 licensing of solid waste disposal areas, modification, suspension, or revocation of such licenses, 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 sections 81-1501 to 81-1532 the Environmental Protection 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 methods for prevention of such discharges or emissions and the responsibility of the discharger or emitter for clean-up, 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; and

(i) Exemptions from permits of the department.

(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 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, 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 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, 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 result 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 air 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 federal Clean Water Act, 33 U.S.C. 1251 et seq.

Sec. 6. That section 81-1506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1506. (1) It shall be unlawful for any person:

(a) To cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state; or

(b) To discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance. A livestock operation is not a nuisance if:

(i) Reasonable techniques are employed to keep dust, noise, insects, and odor at a minimum;

(ii) It is in compliance with applicable regulations adopted by the council and zoning regulations of the local governing body having jurisdiction; and

(iii) The action is brought by or on behalf of a person whose date of lawful possession of the land claimed to be affected by a livestock operation is subsequent either to the issuance of an appropriate permit by the department for such operation, or to the operation of the feedlot and an on-site onsite inspection by the department is made, before or after filing of the suit, and the inspection reveals that no permit is required for such operation.

(2) It shall be unlawful for any person to carry on any of the following activities unless he or she holds a current permit therefor from the department, as is required by it, for the disposal of all wastes which are or may be discharged or emitted thereby into the air, waters, or land of the state:

(a) Discharges for which a permit is required under the National Pollutant Discharge Elimination System created by the Federal Water Pollution Control Act Amendments of 1972 in which case the issuance of such permits shall be according to rules and regulations adopted by the council pursuant to subsection (11) of section 81-1505 and to which other provisions of this section shall not apply;

(b) The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto;

(c) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(d) The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise alter the physical, chemical, or biological properties of any air, waters, or land of the state in any manner not already lawfully authorized; or

(e) The construction or use of any new outlet for the discharge of any wastes into the air, waters, or land of the state.

The department, under such conditions as it may prescribe, shall for the review, recommendations, and written approval of the director require the submission of such plans, specifications, and other information as it deems necessary to carry out the provisions of sections 81-1504 to 81-1532 Environmental Protection Act or to carry out the rules and regulations adopted pursuant to the provisions of sections 81-1504 to 81-1532 such act. When deemed necessary by the director, such plans and specifications shall be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska.

(3) (a) Except in the case of underground injection control or hazardous waste facilities, if within thirty days of the receipt of plans, specifications, or other information required pursuant to this section the department determines that the proposed construction, installation, or establishment will not be in accordance with the requirements of sections 81-1504 to 81-1532 the Environmental Protection Act or applicable rules and regulations, it shall issue a preliminary order prohibiting the construction, installation, or establishment of the air, water, or land contaminant source or sources. Failure of such an order to issue within the time prescribed in this subsection shall be deemed a determination that the construction, installation, or establishment may proceed, if it is in accordance with the plans, specifications, or other information, if any, required to be submitted.

(b) The council may adopt and promulgate rules and regulations setting out time periods for the processing of applications requesting permits for activities regulated pursuant to subsections (9), (13), and (14) of section 81-1505.

(4) In addition to any other remedies available on account of the issuance of a preliminary order disapproving construction, installation, or establishment and prior to invoking any such remedies, the person aggrieved thereby shall, upon request and in accordance with rules of practice and procedure of the department, be entitled to a hearing on the order. Following such hearing, the preliminary order may be affirmed, modified, or withdrawn by a final order of the director which order shall be subject to review as provided in section 81-1509.

(5) Nothing in this section shall be construed to authorize the department to specify the type, design, method of installation, or type of construction of any equipment of manufacturing processes.

(6) Failure by the department to issue an order pursuant to this section shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

Sec. 7. That section 81-1508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1508. (1) Any person who shall violate any of the provisions of sections ~~81-1504 to 81-1532~~ the Environmental Protection Act, or who fails to perform any duty imposed by the provisions of sections ~~81-1504 to 81-1532~~ 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, 33 U.S.C. 1251 et seq., (ii) air pollution standards and regulations, or (iii) hazardous waste standards and regulations, or (iv) mineral production or injection well control 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 sections ~~81-1504 to 81-1532~~ the Environmental Protection Act, 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, created by the Clean Water Act, 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, 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, created by the Clean Water Act, 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., section 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 hundred 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 violation of any air pollution control law 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; and

(g) For violation of any hazardous waste permit or license, permit or license condition, limitation, law, or regulation (i) be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than five ten thousand dollars per day and each day the violation occurs shall be considered a separate offense 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. if such person is a corporation and violates any hazardous waste law or regulations; In addition, the person, or if such person is a corporation the officers of such corporation, may be imprisoned in the county jail for a period of not more than sixty days and in addition may be enjoined from continuing such violation, and (iii) be subject to a civil penalty of not more than five thousand dollars per day. Whether the punishment for violation of any hazardous waste permit or license, permit or license condition, limitation, law, or regulation is criminal or civil, the court shall, in assessing the amount of the penalty, consider shall be based on 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, 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 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 is a corporation the officers of the corporation, may be imprisoned 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 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 sections 84-4504 to 84-4532 the Environmental Protection Act or fails to perform any duty imposed by sections 84-4504 to 84-4532 such act or any regulation issued under sections 84-4504 to 84-4532 such act or who violates any order or determination of the director promulgated pursuant to sections 84-4504 to 84-4532 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 such violation or failure to perform any duty imposed by sections 84-1504 to 84-1532 the Environmental Protection 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 any provision of sections 84-1504 to 84-1532 the Environmental Protection Act, 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.

(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 provisions of Chapter 81, article 15.

Sec. 8. There is hereby created the Department of Environmental Control Cash Fund which shall be used to pay the expenses of the department. All fees collected by the department pursuant to subsection (9) of section 81-1505 shall be paid into the state treasury and credited by the State Treasurer to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 9. The council may adopt and promulgate rules and regulations governing mineral exploration holes prior to August 1, 1983, but such rules and regulations shall not be effective until such date.

The council shall adopt and promulgate rules and regulations authorized by the amendments made by LB 356, Eighty-eighth Legislature, First Session, 1983, to subsection (9) of section 81-1505 within one hundred twenty days of the operative date of this section. All requirements of the Environmental Protection Act shall apply to any permit application regardless of the date of submission, except that the department shall continue to diligently process any application submitted prior to the operative date of this section.

Sec. 10. Nothing in the Environmental Protection Act shall be construed to apply to any wells or holes covered by sections 57-901 to 57-922.

Sec. 11. No person shall, on or before June 1, 1984, engage in uranium mining by means of strip mining, open pit mining, or shaft mining.

Sec. 12. That section 81-1532, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1532. Sections 81-1501 to 81-1532 81-1533 and sections 8 to 11 of this act shall be cited as the Environmental Protection Act.

Sec. 13. As used in sections 13 to 26 of this act, unless the context otherwise requires:

(1) Person shall mean any natural person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, or any person acting under a declaration of trust;

(2) Sever shall mean to take from the land by any means whatsoever; and

(3) Uranium shall mean tri-uranium octoxide.

Sec. 14. A tax is hereby levied on all uranium severed from the soil of this state. Such tax shall be paid by the person engaged in the severing of such uranium, shall become due and payable monthly, and shall operate as a first lien on all such uranium. Such lien shall follow the resource into the hands of third persons, whether the resource is acquired in good faith or bad faith or is in a manufactured or unmanufactured state.

Sec. 15. The tax imposed by section 14 of this act shall be levied on the value of the uranium severed, and shall be paid at the rate of two per cent of the value of such uranium produced each year in excess of five million dollars gross value. The value shall be computed immediately after such severance at the place where the uranium is severed.

Sec. 16. The tax imposed by section 14 of this act shall be due and payable in monthly installments on or before the last day of the month next succeeding the month in which the uranium was severed. If the final filing date falls on a Saturday, Sunday, or

legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed on time if mailed in an envelope properly addressed to the Tax Commissioner and postmarked before midnight of the final filing date. For good cause the Tax Commissioner may grant a taxpayer reasonable extensions of time for filing, not to exceed ten days in the aggregate for any one return.

The person engaged in the severing, on or before the last day of the month next succeeding the month in which the uranium was so severed, shall make out and file with the Tax Commissioner a report or return for the preceding month in such form as may be prescribed by the Tax Commissioner showing: The business conducted by the person engaged in the severing during the preceding month; the kind, gross quantity, and value of the uranium so severed; the name of the owner of the resource at the time of the severance; the portion owned by each owner; the location of the place where the uranium is severed; and such other information as the Tax Commissioner may require.

Sec. 17. The tax imposed by section 14 of this act shall be paid to the Tax Commissioner who shall pay all money received to the State Treasurer to be placed in the General Fund.

Sec. 18. The Tax Commissioner, whenever he or she deems it necessary to insure compliance with sections 13 to 26 of this act, may require any person subject to the tax imposed by section 14 of this act to deposit with the Tax Commissioner a suitable indemnity bond to insure payment of the tax as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use of the bond shall be given to such person by either registered or certified mail.

Sec. 19. The tax imposed by section 14 of this act shall be paid and the report required by section 16 of this act shall be made by the person engaged in the severing of the uranium, whether or not he or she is the owner of the land from which the uranium is severed.

Sec. 20. The person remitting to the Tax Commissioner the tax imposed by section 14 of this act shall deduct, from the amount due any person owning an interest in the uranium or in the proceeds of the uranium at the time of severance, the proportionate amount of such tax before making payment to any such person.

Sec. 21. The Tax Commissioner may bring an action against any person engaged in the severing of uranium for the collection of taxes which are due and delinquent under sections 13 to 26 of this act.

Sec. 22. The tax imposed by section 14 of this act shall become delinquent after the last day of each month and, in addition to the amount of the delinquent tax, there shall be paid and the Tax Commissioner shall collect a penalty for such delinquency in the amount of one per cent of the delinquent taxes for each month, or part thereof, that the delinquency has continued.

Sec. 23. Any person who shall intentionally make false oath to any return or report required by sections 13 to 26 of this act shall be guilty of perjury and shall, upon conviction thereof, be punished as prescribed by section 28-915.

Sec. 24. The Tax Commissioner shall supervise and enforce the collection of all taxes that may be due pursuant to sections 13 to 26 of this act. The commissioner may adopt and promulgate any rules and regulations necessary to carry out such sections, including, but not limited to, provisions concerning the manner in which the tax shall be paid and the form of required reports.

Sec. 25. Any person failing or refusing to make returns or reports, as required by sections 13 to 26 of this act, and remaining in default for thirty days after notice to him or her by the Tax Commissioner, or failing to comply with any other requirement of sections 13 to 26 of this act, shall be guilty of a Class IV misdemeanor.

Sec. 26. The Attorney General or the county attorney of the county in which the uranium is located may file a petition in the district court of such county and, upon such filing, the district court shall have the power to restrain by injunction any person from continuing to sever such uranium while delinquent in any report or the payment of any tax, penalty, or cost required by sections 13 to 26 of this act.

Sec. 27. Sections 1 and 28 of this act shall become operative on August 1, 1983. The remaining sections shall be operative on their effective date.

Sec. 28. That original section 57-905, Revised Statutes Supplement, 1982, is repealed.

Sec. 29. That original sections 81-1502, 81-1503, 81-1504, 81-1505, 81-1506, 81-1508, and 81-1532, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 30. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.