

LEGISLATIVE BILL 1209

Approved by the Governor April 14, 1998

Introduced by Natural Resources Committee: Beutler, 28, Chairperson;
Bohlke, 33; Bromm, 23; Elmer, 44; Preister, 5; Schrock, 38;
Stuhr, 24

AN ACT relating to environment; to amend sections 81-1501 to 81-1503, 81-1506 to 81-1508.02, 81-1511, 81-1512, and 81-1532, Reissue Revised Statutes of Nebraska, section 46-257, Revised Statutes Supplement, 1996, sections 81-1504 and 81-1505, Revised Statutes Supplement, 1997, and section 88, Legislative Bill 1161, Ninety-fifth Legislature, Second Session, 1998; to adopt the Livestock Waste Management Act; to provide a penalty; to provide duties for the Department of Environmental Quality and the Department of Water Resources; to change provisions relating to geologists; 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. Sections 1 to 14 of this act shall be known and may be cited as the Livestock Waste Management Act.

Sec. 2. For purposes of the Livestock Waste Management Act:

(1) Animal unit means a unit of measurement for any livestock operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing fifty-five pounds or more multiplied by 0.4, plus the number of weaned pigs weighing less than fifty-five pounds multiplied by 0.04, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, plus the number of chickens multiplied by 0.01, plus the number of turkeys multiplied by 0.02, plus the number of ducks multiplied by 0.2. Such calculation may be modified for immature animals under section 13 of this act;

(2) Best management practices means schedules of activities, prohibitions, maintenance procedures, and other management practices found to be the most effective and practicable methods for specific sites to prevent or reduce the discharge of pollutants to waters of the state or control odor where appropriate. Best management practices also includes operating procedures and practices to control site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage;

(3) Council means the Environmental Quality Council;

(4) Department means the Department of Environmental Quality;

(5) Discharge means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state;

(6) Existing livestock waste control facility means any livestock waste control facility that holds a permit issued by the department before the operative date of this section;

(7) Livestock operation means the feeding or holding of beef cattle, dairy cattle, horses, swine, sheep, poultry, and other livestock in buildings, lots, or pens which normally are not used for the growing of crops or vegetation but does not include the holding of cattle in calving operations for less than ninety days per year. Two or more livestock operations under common ownership are deemed to be a single livestock operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock wastes;

(8) Livestock waste control facility means any structure or combination of structures utilized to control livestock waste until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include, but are not limited to, diversion terraces, holding ponds, debris basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock waste;

(9) New livestock waste control facility means any livestock waste control facility that applies for a permit from the department on or after the operative date of this section;

(10) Person has the same meaning as in section 81-1502;

(11) Prior pending application means an application for a livestock waste control facility received by the department prior to the operative date of this section; and

(12) Waters of the state has the same meaning as in section 81-1502.

Sec. 3. In order to implement the Livestock Waste Management Act, the Governor shall appoint a livestock waste management task force to work with the department to conduct the study as required by subsection (2) of section 8 of this act. Task force members shall include:

(1) Three representatives of the livestock industry, one representing a class I livestock waste control facility, one representing a class II livestock waste control facility, and one representing either a class III or class IV livestock waste control facility;

(2) A biological systems engineer from the University of Nebraska;

(3) One elected representative from the natural resources districts who is not involved in the livestock industry;

(4) An agronomist from the University of Nebraska;

(5) A representative from the natural resource conservation service;

(6) A member of the general public representing environmental interests; and

(7) A representative of municipalities.

The task force shall cease to exist on December 1, 1998.

Sec. 4. (1) When there is a potential for discharge into waters of the state, as determined by the department:

(a) No person shall construct a livestock waste control facility without first obtaining a construction permit from the department; and

(b) No person shall operate a livestock waste control facility without an operating permit or interim use authorization from the department.

(2) Livestock waste control facilities shall be classified according to the maximum number of animal units for which the livestock waste control facility is designed. The council, in adopting rules and regulations under section 13 of this act, shall set out the requirements for any livestock waste control facility which is reclassified after permit issuance. Classifications shall be as follows:

(a) A class I livestock waste control facility is designed for one thousand or less animal units;

(b) A class II livestock waste control facility is designed for more than one thousand and five thousand or less animal units;

(c) A class III livestock waste control facility is designed for more than five thousand animal units and twenty thousand or less animal units; and

(d) A class IV livestock waste control facility is designed for more than twenty thousand animal units.

Sec. 5. Any person required to obtain a permit under section 4 of this act may begin construction of the proposed livestock operation after the person acknowledges on a form provided by the department that a permit may not be approved.

Sec. 6. (1) Any person owning or operating a livestock operation that does not hold a permit or has not been notified by the department that no permit was required shall, on forms prescribed by the department, request the department to inspect such person's livestock operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after January 1, 1999, there shall be an inspection fee of fifty dollars for a class I or class II livestock waste control facility and an inspection fee of five hundred dollars for a class III or class IV livestock waste control facility. A person who requests an inspection prior to January 1, 2000, shall not be determined by the department to be in violation of the permitting provisions of the Livestock Waste Management Act prior to issuance or denial of a permit for such livestock waste control facility. However, the person shall not violate any provisions of the Environmental Protection Act.

(2) The department shall, in conjunction with natural resources districts and the Cooperative Extension Service of the University of Nebraska, publicize information to make owners and operators of affected livestock operations aware of the need to request an inspection.

Sec. 7. (1) A permit issued under section 4 of this act or a permit for an existing livestock waste control facility shall be valid as long as the livestock operation continues to operate. The department may modify any permit during its term in the event rules and regulations adopted under the Livestock Waste Management Act change in such a manner as to affect provisions in the permit. The department may require the permit holder to furnish such information as is necessary to determine compliance with current rules and regulations.

(2) The department, in modifying permits under this section, shall include conditions in the permit which will allow a reasonable period of time of up to one year to achieve compliance with the rules and regulations and the

act. Modifications shall be done in accordance with section 81-1507 and pursuant to rules and regulations as adopted under section 13 of this act.

(3) Any person holding a permit issued under section 4 of this act or a permit issued for an existing livestock waste control facility shall notify the department of a change of ownership and other information as prescribed by the department for purposes of review under section 9 of this act.

Sec. 8. (1) On or after June 1, 1998, any person required to obtain a permit for a livestock waste control facility under section 4 of this act shall file an application with the department in the manner established by the department. The application fees shall be three hundred dollars for a class I livestock waste control facility, eight hundred dollars for a class II livestock waste control facility, one thousand five hundred dollars for a class III livestock waste control facility, and five thousand dollars for a class IV livestock waste control facility. For permit modifications the fee shall equal the amount of the application fee for the class of the proposed modification minus the application fee paid for the original application. If the permit modification will result in a lower class designation, there shall be no fee.

(2) The department, in conjunction with the livestock waste management task force, shall conduct a study to recommend appropriate inspection or operation fees which may be charged to livestock waste control facilities under the Livestock Waste Management Act. Such fees shall, if implemented, in conjunction with other recommended revenue sources, be sufficient to pay the costs of administering and enforcing the act. Such study shall also include best management practices for odor control, the feasibility of requiring financial assurance requirements for class III and class IV livestock waste control facilities and the creation of an indemnification fund, and an analysis of the new technologies available relating to the disposal of dead animals. A report of such study shall be submitted to the Natural Resources Committee of the Legislature no later than December 1, 1998.

(3) All fees collected under this section and section 6 of this act shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the Livestock Waste Management Act including the number of inspections conducted for each class of livestock waste control facility, the number of permitted livestock waste control facilities, the number of livestock operations inspected, the size of the livestock waste control facilities, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

Sec. 9. (1) In addition to other permit review determinations under the Livestock Waste Management Act and the Environmental Protection Act, the department may reject an application for a construction or operating permit, including a prior pending application for a permit, for a livestock waste control facility upon a finding that the applicant is unsuited or unqualified to perform the obligations of a permit holder. An applicant is unsuited or unqualified to perform the obligations of a permit holder if the applicant, any officer, director, partner, or resident general manager of the livestock operation for which application has been made:

(a) Has intentionally misrepresented a material fact in applying for a permit;

(b) Has habitually or intentionally violated environmental laws of any state or the United States or any other nation, which violation has resulted in significant and material environmental damage;

(c) Has had any permit revoked due to a violation of the environmental laws of any state or the United States or any other nation; or

(d) Has otherwise demonstrated through clear and convincing evidence of previous actions that the applicant lacks the necessary competency to reliably carry out the obligations imposed by law upon the permit holder.

(2) An application for a permit for a livestock waste control facility shall include a certification, sworn under oath and signed by the applicant, that he or she is suited or qualified under this section to obtain such a permit. Any material misrepresentation of fact in regard to this

certification may result in rejection of the application or revocation of an existing permit as provided for in this section.

Sec. 10. The department, or an individual or organization the department deems qualified, shall perform a postconstruction inspection on all livestock waste control facilities requiring a permit prior to use of the livestock waste control facility and within thirty days after the department receives notification of the completion of the facility. Such period may be reasonably extended by the department due to adverse weather conditions or an act of God that would not allow an inspection within thirty days. If the inspection is not done within the time specified in this section, the livestock waste control facility may proceed with operations.

Sec. 11. (1) In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

(2) Upon receipt of a livestock waste control facility permit application, the department shall notify the natural resources district or districts in which the livestock waste control facility is to be located of the permit application. The natural resources district or districts shall have twenty days to comment to the department regarding any conditions that may exist at the proposed site which the department should know when determining the appropriateness of issuing such permit. Such natural resources district or districts may request the department for a twenty-day extension of the comment period.

(3) The department shall notify the county board or boards when an application for a livestock waste control facility has been submitted to the department.

(4) Upon initial receipt of the permit application, the department has thirty days to conduct a preliminary review of the application and to formally request in writing additional information or to acknowledge that the application is complete. Within sixty days after receipt of a completed permit application, the department shall transmit its written findings, conclusions, and reasons for approval or disapproval to the applicant. This subsection applies to permit applications received by the department on or after September 1, 1998, for any pending application or any new permit application.

(5) The department shall provide for public notice of such permit application for all class III and class IV livestock waste control facilities in the county or counties where the livestock waste control facility is to be located.

Sec. 12. (1) An applicant for a permit for a livestock waste control facility under the Livestock Waste Management Act shall, before issuance of a permit by the Department of Environmental Quality, obtain any necessary approvals from the Department of Water Resources under section 46-257 and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Water Resources, may require the applicant to obtain approval from the Department of Water Resources for any dam or lagoon structure, the failure of which could result in a significant discharge into waters of the state and have a significant impact on the environment. When such approval is required, the Department of Water Resources shall approve or deny the dam or lagoon structure within sixty days after the request is made. The Department of Environmental Quality may provide for the payment of such costs of the Department of Water Resources with revenue generated under section 8 of this act.

(2) Notwithstanding the provisions of the Engineers and Architects Regulation Act, the Department of Environmental Quality shall have authority to determine engineering requirements for class I livestock waste control facilities and existing nonpermitted livestock waste control facilities.

Sec. 13. (1) The council shall adopt and promulgate rules and regulations to carry out the Livestock Waste Management Act within twelve months after the operative date of this section. The rules and regulations shall include a permit program for livestock waste control facilities which provides for:

(a) A permitting process which includes:

(i) A construction permit which prohibits construction of a livestock waste control facility prior to its issuance;

(ii) An operating permit for new and existing livestock waste control facilities to be issued after terms of the construction permit have

been fulfilled and which may be terminated, modified, or revoked by the department for cause;

(iii) An application process which requires a permitting determination by the department within sixty days after receipt of a complete application, an acknowledgment by the applicant that a construction permit may not be approved, and an operating plan to be incorporated into the permit;

(iv) Monitoring of surface or ground water by the permittee which may be necessary as determined by the department where a significant risk to waters of the state exists;

(v) Modification of operating permits in accordance with section 7 of this act; and

(vi) Notification of the applicant by the department within thirty days if the application is complete or, if the application is not complete, notification as to what information or requirements are needed;

(b) Requirements for existing livestock waste control facilities whose permits are being modified under section 7 of this act;

(c) Best management practices where appropriate to specific sites to control runoff of waste, including adequate area for land application and proper methods and rates of disposal of waste and nutrients such as nitrogen and phosphorus, and best management practices for control of odor which terminate July 1, 1999;

(d) Modifications to the calculation of animal units for immature animals; and

(e) A training program for land application of waste which may include contracting with the Cooperative Extension Service of the University of Nebraska for curriculum development and instruction.

(2) Rules and regulations adopted and promulgated under this section may be based upon size classification of livestock waste control facilities and the form of waste management and may include more stringent requirements for facilities of larger size classes and waste control technologies that are more likely to cause adverse impacts.

(3) The council may adopt and promulgate any other rules and regulations necessary to carry out the purposes of the Livestock Waste Management Act.

Sec. 14. It is the intent of the Legislature that in enforcing the provisions of the Livestock Waste Management Act the department shall give priority to livestock waste control facilities within classes in the following order: Class IV, class III, class II, and class I.

Sec. 15. The liquified remains of any dead animal may be injected below the surface of the ground but may not be spread above the surface of the ground in any manner. Any person violating the provisions of this section shall be guilty of a Class II misdemeanor.

Sec. 16. Section 46-257, Revised Statutes Supplement, 1996, is amended to read:

46-257. (1)(a) Except as provided in subsections (2) and (3) of this section, any person intending to construct a dam for any purpose, including, but not limited to, providing a reservoir for temporary or permanent storage of surface water, well water, animal and human waste effluent, and mine tailings and sediments, shall submit plans, drawings, and specifications of the same to the Department of Water Resources and at the same time submit an application to comply with section 46-241, when applicable, before beginning construction. No dam shall be constructed until the required plans, drawings, and specifications have been approved by the department.

(b) An applicant for a permit for a livestock waste control facility required by the Department of Environmental Quality in conjunction with the Department of Water Resources to obtain approval for any dam or lagoon under section 12 of this act shall submit plans, drawings, and specifications to the Department of Water Resources and obtain approval before beginning construction. The Department of Water Resources shall approve or deny the dam or lagoon within sixty days after the request is made.

(2) Any person intending to construct a low-hazard dam, as defined in the rules and regulations of the department, less than twenty-five feet high, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam, with a water storage impounding capacity of less than fifteen acre-feet, measured below the crest of the lowest open outlet or overflow, and with a total storage capacity, including surcharge storage through any emergency spillway, below the top of the dam of less than fifty acre-feet, shall be exempt from the provisions of subsection (1) of this section and also shall be exempt from the provisions of subsection (1) of section 46-241 as long as there will be no diversion or withdrawal of water from the reservoir.

(3) Any person intending to construct on a dry watercourse a low-hazard dam, as defined in the rules and regulations of the department, less than twenty-five feet high, measured from the natural bed of the stream or watercourse at the downstream toe of the dam to the top of the dam, for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from the provisions of subsection (1) of this section and also shall be exempt from the provisions of subsection (1) of section 46-241 if surface water runoff, except incidental runoff from the upstream area, is adequately diverted around the structure and is not permitted to enter the reservoir area and if the total storage capacity below the top of the dam is less than fifty acre-feet. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm must be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(4) Subsections (2) and (3) of this section do not waive any requirements of the Department of Environmental Quality.

(5) Whenever the Director of Water Resources determines that a dam or lagoon has been constructed in violation of subsection (1) of this section, he or she may order the immediate removal of such dam or lagoon and if necessary may institute legal proceedings to obtain compliance with such order.

(6) Any person constructing a dam or lagoon without having complied with subsection (1) of this section shall be guilty of a Class V misdemeanor, and every day such dam or lagoon is maintained shall be considered a separate offense.

Sec. 17. Section 81-1501, Reissue Revised Statutes of Nebraska, is amended to read:

81-1501. Whereas the water, land, and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be:

(1) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses;

(2) To achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and enforce uniformly the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water, and land;

(3) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act, and in the Integrated Solid Waste Management Act, and the Livestock Waste Management Act; and

(4) To protect human health through environmental enforcement.

Sec. 18. Section 81-1502, Reissue Revised Statutes of Nebraska, is amended to read:

81-1502. For purposes of the Environmental Protection Act, 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, 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, property, or the conduct of business;

(3) Chairperson shall mean the chairperson of the Environmental Quality Council and council shall mean the Environmental Quality 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 Environmental Protection Act 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 Quality, which department is hereby created;

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

(8) Disposal system shall mean a system for disposing of wastes, including hazardous 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; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity;

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

(12) Sewerage system shall mean pipelines, conduits, pumping stations, 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 air, land, or 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 of contaminants, 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, or 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, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or 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, including a schedule of compliance, 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;

(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, 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 solid waste shall 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 Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or source, special nuclear, or 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;

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

(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, the depth of which 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 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;

(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;

(35) Solution mining shall mean the use of an injection well and fluids to promote the extraction of mineral resources;

(36) Uranium shall mean tri-uranium oct-oxide; and

(37) Solid waste management facility shall mean a facility as defined in section 13-2010; and

(38) Livestock waste control facility shall have the same meaning as in section 2 of this act.

Sec. 19. Section 81-1503, Reissue Revised Statutes of Nebraska, is amended to read:

81-1503. (1) The Environmental Quality 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:

(a) One representative of the food products manufacturing industry;

(b) One representative of conservation;

(c) One representative of the agricultural processing industry;

(d) One representative of the automotive or petroleum industry;

(e) One representative of the chemical industry;

(f) One representative of heavy industry;

(g) One representative of the power generating industry;

(h) One representative of agriculture actively engaged in crop

production;

(i) One representative of labor;

(j) One professional engineer experienced in control of air and water pollution and solid wastes;

(k) One physician knowledgeable in the health aspects of air, water, and land pollution;

- (l) One representative from county government;
- (m) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;
- (n) One representative of the livestock industry; and
- (o) One representative of the public at large.

(2) Members shall serve for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made. As the term of an appointee to the council expires, the succeeding appointee shall be a representative of the same segment of the public as the previous appointee. In the case of appointees to vacancies occurring from unexpired terms, each 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 a per diem of forty dollars while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(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. A 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 Quality who shall be experienced in air, water, and land pollution control and who may be otherwise an employee of 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, and the Integrated Solid Waste Management Act, and the Livestock Waste Management Act. 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 enters 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, 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 permitholders or applicants for a permit under the 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 permitholder under the Environmental Protection Act. Such oath and affirmation shall be filed with the Secretary of State.

Sec. 20. Section 81-1504, Revised Statutes Supplement, 1997, is amended to read:

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 Environmental Protection Act, ~~and~~ the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts;

(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 and consult, cooperate, and contract with other agencies of the state, the federal government, and other states, with interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of the acts;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 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 of such pollution as it may deem advisable and necessary for the discharge of its duties under the Environmental Protection Act, ~~and~~ the Integrated Solid Waste Management Act, and the Livestock Waste Management Act, using its own staff or 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 of such pollution;

(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, or 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 the director;

(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 the Environmental Protection Act, ~~and~~ the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(11) To issue, continue in effect, revoke, modify, or deny permits, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, (a) to prevent, control, or abate pollution, (b) for the discharge of wastes into the air, land, or waters of the state, and (c) 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 the Environmental Protection Act, ~~and~~ the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

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

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

(b) To require, for purposes of developing or assisting the

development of any regulation or enforcing any of the provisions of the Environmental Protection Act which pertain to hazardous waste, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste, upon request of any officer, employee, or representative of the department, to furnish information relating to such waste and any permit involved. Such person shall have access at all reasonable times to a copy of all results relating to such waste;

(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 the Environmental Protection Act, and the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(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 with any person proposing to construct, install, or otherwise acquire an air, land, or water contaminant source or a device or system for control of such source, upon request of such person, concerning the efficacy of such device or system or concerning 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 the Environmental Protection Act, or the Integrated Solid Waste Management Act, the Livestock Waste Management Act, rules and regulations in force pursuant to the acts, 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 the Environmental Protection Act, and the Integrated Solid Waste Management Act, and the Livestock Waste Management 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 commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in the Environmental Protection Act, and the Integrated Solid Waste Management Act, and the Livestock Waste Management 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 and 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. 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 81-1174 to 81-1177;

(27) 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;

(28) 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, an operational standard, or a combination thereof, adequate to protect the public health from such pollutant or pollutants with an ample margin of safety;

(29) To establish the position of public advocate to be located within the department to assist and educate the public on departmental programs and to carry out all duties of the ombudsman as provided in the Clean

Air Act, as amended, 42 U.S.C. 7661f;

(30) Under such conditions as it may prescribe for the review, recommendations, and written approval of the director, to require the submission of such plans, specifications, and other information as it deems necessary to carry out the Environmental Protection Act, and the Integrated Solid Waste Management Act, and the Livestock Waste Management Act or to carry out the rules and regulations adopted pursuant to the acts. When deemed necessary by the director, the plans and specifications shall be prepared and submitted by a professional engineer licensed to practice in Nebraska;

(31) To carry out the provisions of the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(32) To consider the risk to human health and safety and to the environment in evaluating and approving plans for remedial action.

Sec. 21. Section 81-1505, Revised Statutes Supplement, 1997, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

was suitable prior to the activity.

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

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

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

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

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

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

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

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

(f) Classification of air quality control regions;

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

(i) Reduce the volume of or eliminate emissions of the pollutants through process changes, substitution of materials, or other modifications;

(ii) Enclose systems or processes to eliminate emissions; or

(iii) Collect, capture, or treat the pollutants when released from a process, stack, storage, or fugitive emission point;

(h) Restrictions on open burning and fugitive emissions;

(i) Provisions for issuance of general operating permits, after public notice, for sources with similar operating conditions and for revoking

such general authority to specific permittees;

(j) Provisions for implementation of the sulfur dioxide allowance system of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., through the operating permit program;

(k) A provision that operating permits will not be issued if the Environmental Protection Agency objects in a timely manner;

(l) Provisions for periodic reporting of emissions;

(m) Limitations on emissions from process operations, fuel-burning equipment, and incinerator emissions and such other restrictions on emissions as are necessary to protect the public health and welfare;

(n) Time schedules for compliance;

(o) Requirements for owner or operator testing and monitoring of emissions;

(p) Control technology requirements when it is not feasible to prescribe or enforce an emission standard; and

(q) Procedures and definitions necessary to carry out payment of the annual emission fee set in section 81-1505.04.

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

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

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

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

(b) In adopting regulations for hazardous waste management, the council shall consider, in addition to criteria in subdivision (a) of this subsection, establishing criteria for (i) identifying hazardous waste including extraction procedures, toxicity, persistence, and degradability in nature, potential for accumulation in tissue, flammability or ignitability, corrosiveness, reactivity, and generation of pressure through decomposition, heat, or other means, and other hazardous characteristics, (ii) listing all materials it deems hazardous and which should be subject to regulation, and (iii) locating treatment, storage, or disposal facilities for such wastes. In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b)(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 establish a schedule of fees to be paid to the director by licensees or permittees operating hazardous waste processing facilities or disposal areas on the basis of a monetary value per cubic foot or per pound of the hazardous wastes, sufficient but not exceeding the amount necessary to reimburse the department for the costs of monitoring such facilities or areas during and after operation of such facilities or areas. The licensees may

assess a cost against persons using the facilities or areas. The director shall remit any money collected from fees paid to him or her to the State Treasurer who shall credit the entire amount thereof to the General Fund.

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

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

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

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

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

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

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

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

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

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

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

(i) Exemptions from permits of the department; and

(j) The Integrated Solid Waste Management Act.

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

(17) Prior to adopting, amending, or repealing standards and classifications of air, water, and land quality and rules and regulations under the Integrated Solid Waste Management Act or the Livestock Waste Management Act, the council shall, after due notice, conduct public hearings thereon. Notice of public hearings shall specify the waters or the area of the state for which standards of air, water, or land are sought to be adopted, amended, or repealed and the time, date, and place of such hearing. Such hearing shall be held in the general area to be affected by such standards. Copies of such notice shall be:

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

days before the date fixed for such hearing; and

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

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

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

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

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

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

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

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

(iii) An established escrow account; or

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

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

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

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

(22) The council shall adopt and promulgate rules and regulations no more stringent than the provisions of section 1453 et seq. of the federal

Safe Drinking Water Act for public water supply system source water assessment programs.

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

Sec. 22. Section 81-1506, Reissue Revised Statutes of Nebraska, is amended to read:

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 to the issuance of an appropriate permit by the department for such operation or is subsequent to the operation of the feedlot and an 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:

(a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by rules and regulations adopted and promulgated pursuant to section 81-1505;

(b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department;

(c) Increase in volume or strength any waste in excess of permitted discharges specified under any existing permit;

(d) Construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise cause an alteration of the physical, chemical, or biological properties of any air, waters, or land of the state in a manner that is not lawfully authorized; or

(e) Construct or use any new outlet for the discharge or emission of any wastes into the air, waters, or land of the state without the necessary permit.

(3) It shall be unlawful for any person to:

(a) Construct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and the rules and regulations adopted and promulgated by the council pursuant to the acts;

(b) Violate any term or condition of a solid waste management facility permit;

(c) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Integrated Solid Waste Management Act; or

(d) After October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act.

(4) It shall be unlawful to:

(a) Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505;

(b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or

(c) Violate any emission limit or air quality standard established by the council.

(5) It shall be unlawful for any person to:

(a) Construct or operate a livestock waste control facility without

first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts;

(b) Violate any provision of the Livestock Waste Management Act;

(c) Violate any term or condition of a livestock waste control facility permit; or

(d) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Livestock Waste Management Act.

(6) 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.

Sec. 23. Section 81-1507, Reissue Revised Statutes of Nebraska, is amended to read:

81-1507. (1) Whenever the director has reason to believe that a violation of any provision of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, a rule or regulation pursuant to ~~either act~~ such acts, or any order of the department has occurred, he or she may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision of the act, rule or regulation, or order alleged to be violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named therein requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (5) of this section not less than thirty days before the time set for the hearing.

(2) The director shall afford an opportunity for a fair hearing, in accordance with the provisions of the Environmental Protection Act, ~~or the Integrated Solid Waste Management Act, or the Livestock Waste Management Act,~~ to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing, the director or hearing officer shall make findings of fact and conclusions of law and enter such order as in his or her opinion will best further the purposes of the acts and shall give written notice of such order to the alleged violator and to such other persons who appear at the hearing and make written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the courts as provided in section 81-1509 within thirty days after notice has been sent to the parties.

(3) Any person who is denied a permit by the director or who has such permit revoked or modified shall be afforded an opportunity for a fair hearing as provided in subsection (2) of this section in connection therewith upon written application to the director within thirty days after receipt of notice from the director of such denial, revocation, or modification. On the basis of such hearing the director shall affirm, modify, or revoke his or her previous determination.

(4) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Notwithstanding the provisions of subsection (2) of this section, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the director shall be afforded a hearing as soon as possible and not later than ten days after such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(5) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director shall be served on any person affected thereby in a manner provided for service of a summons in a civil action. Proof of service shall be filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts therein stated, and a certified copy thereof shall have like force and effect.

(6) The hearings provided for in this section may be conducted by the director or by any member of the department acting in his or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the director at any time and place. A verbatim record of the proceedings of such hearings shall be taken and filed with the director, together with findings of fact and conclusions of law made by the director or hearing officer. Witnesses who are subpoenaed shall receive the same fees as in civil actions in the district court and mileage as provided in section 81-1176. In case of contumacy or refusal to obey a notice of hearing or subpoena issued under the provisions of this section, the district court shall have jurisdiction, upon application of the director, to issue an order requiring such person to appear and testify or produce evidence as the case may require and any failure to obey such order of the court may be punished by such court as contempt thereof.

If requested to do so by any party concerned with such hearing, the full stenographic notes, or tapes of an electronic transcribing device, of the testimony presented at such hearing shall be taken and filed. The stenographer shall, upon the payment of the stenographer's fee allowed by the court therefor, furnish a certified transcript of the whole or any part of the stenographer's notes to any party to the action requiring and requesting the same.

Sec. 24. Section 81-1508, Reissue Revised Statutes of Nebraska, is amended to read:

81-1508. (1) Any person who violates any of the provisions of the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act, fails to perform any duty imposed by either act or any rule or regulation issued thereunder, or violates any order or determination of the director promulgated pursuant to either act and causes the death of fish or other wildlife shall, in addition to the penalties provided in sections 81-1508.01 and 81-1508.02, 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 in which such violation or failure to perform the duty imposed occurred.

(2) Except as provided for in subsection (3) 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 and sections 81-1508.01 and 81-1508.02, the director, whenever he or she has reason to believe that any person, firm, or corporation is violating or threatening to violate any provision of the acts, any rule or regulation adopted and promulgated thereunder, or any order of the director, may petition the district court for an injunction. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the acts.

(3) Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to the health of humans or animals or to the environment, the director may petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts, to stop such handling, storage, treatment, transportation, or disposal, and to take such other action as may be necessary. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the Environmental Protection Act, ~~and~~ the Integrated Solid Waste Management Act, and the Livestock Waste Management Act.

Sec. 25. Section 81-1508.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-1508.01. (1) Any person who violates the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act by knowingly and willfully committing any of the following offenses shall be guilty of a Class IV felony:

(a) Violating any water pollution control law, rule, or regulation adopted pursuant to the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or any permit or permit condition or limitation or failing to obtain a permit as required by the Environmental Protection Act, ~~or~~ the Integrated Solid Waste

Management Act, or the Livestock Waste Management Act;

(b) Violating any air pollution control law, rule, regulation, permit, license, or permit or license condition or limitation;

(c) Violating any hazardous waste control law, rule, regulation, permit, license, or permit or license condition or limitation;

(d) Violating any mineral production, mineral exploration, or injection control law, rule, regulation, permit, license, or permit or license condition or limitation;

(e) Making any false statement, representation, or certification in any application, label, manifest, record, report, plan, or other document required to be filed or maintained by the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts;

(f) Falsifying, tampering with, or rendering inaccurate any monitoring device or method used or required for compliance with any permit or license or the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts; or

(g) Transporting hazardous waste to an unpermitted facility.

(2) Any person who violates the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act by knowingly and willfully committing any of the following offenses shall be guilty of a Class I misdemeanor:

(a) Violating any solid waste control law, rule, regulation, permit, license, or permit or license condition or limitation; or

(b) Violating any livestock waste control law, rule, regulation, permit, license, or permit or license condition or limitation.

(3) Any person who knowingly and willfully violates any other provision of the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or any rule or regulation adopted and promulgated pursuant to such acts shall be guilty of a Class III misdemeanor.

(4) Each violation under this section shall be actionable. In case of a continuing violation, each day shall constitute a separate offense. Any person who knowingly and willfully violates this section shall be subject to personal liability under this section. In assessing the amount of any fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

Sec. 26. Section 81-1508.02, Reissue Revised Statutes of Nebraska, is amended to read:

81-1508.02. (1) It shall be unlawful for any person:

(a) To refuse the right of entry and inspection to any authorized representative of the department when the representative is acting under the provisions of a permit issued by the department;

(b) To violate any air, water, or land quality standards, any emission or effluent standards or limitations, any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, ~~or~~ the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts;

(c) To make any false statement, representation, or certification in any application, label, record, report, plan, or other document required to be filed or maintained by such acts, rules, or regulations;

(d) To falsify, tamper with, or render inaccurate any monitoring device or method used or required for compliance with a permit or license or such acts, rules, or regulations; or

(e) To violate any other provision of or fail to perform any other duty imposed by such acts, rules, or regulations.

(2) Each violation of this section or of section 81-1506 shall subject a person to a civil penalty of no more than ten thousand dollars per day. In case of a continuing violation, each day shall constitute a separate offense. The amount of the penalty shall be based on the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

Sec. 27. Section 81-1511, Reissue Revised Statutes of Nebraska, is amended to read:

81-1511. Any duly authorized officer, employee, or representative of the director may at any reasonable time, with the consent of the person or persons in control of an air, land, or water contaminant source, enter and inspect any property, premise, or place on or at which such a contaminant source is located or being constructed, installed, or established for the

purpose of ascertaining the state of compliance with the Environmental Protection Act, ~~and the Integrated Solid Waste Management Act, and the Livestock Waste Management Act~~ and rules and regulations in force pursuant to the acts. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by the district court as provided by law to such officer, employee, or representative of the department for the purpose of enabling him or her to make such inspection. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials and warrants. No person shall obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in acute and compelling emergency situations when there is neither sufficient time nor opportunity to obtain a search warrant. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Sec. 28. Section 81-1512, Reissue Revised Statutes of Nebraska, is amended to read:

81-1512. Nothing in the Environmental Protection Act, ~~or the Integrated Solid Waste Management Act, or the Livestock Waste Management Act~~ shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration if such power is conferred by statute or constitutional provision or inheres in the office.

Sec. 29. The department shall establish a telephone line to provide information on the department's programs and requirements and to report complaints and suspected violations of the various environmental statutes and regulations which the department administers, as well as complaints regarding the department's regulation and enforcement activities. The department may charge a fee for the use of such a telephone line.

Sec. 30. Section 81-1532, Reissue Revised Statutes of Nebraska, is amended to read:

81-1532. Sections 81-1501 to 81-1533 ~~and section 29 of this act~~ shall be known and may be cited as the Environmental Protection Act.

Sec. 31. Section 88, Legislative Bill 1161, Ninety-fifth Legislature, Second Session, 1998, is amended to read:

Sec. 88. (1) The following activities do not require licensure as a geologist under the Geologists Regulation Act:

(a) Geological work performed by an employee or a subordinate of a professional geologist if the work does not include responsible charge of geological work and is performed under the direct supervision of a professional geologist who is and remains responsible for such work;

(b) Geological work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, and not having a substantial impact upon the public health, safety, and welfare, as determined by the board;

(c) Geologic research conducted through academic institutions, agencies of the federal or state governments, or nonprofit research institutions;

(d) Teaching in geology or related physical or natural sciences;

(e) Work performed by a professional engineer appropriately licensed in this state that is within the generally accepted scope of engineering practice;

(f) The practice of any other legally recognized profession;

(g) The practice of or offer to practice geology by a person not a resident of and having no established place of business in this state who desires to practice geology for a specific project. The person shall make application to the board in writing, and after payment of a fee established by the board by rule and regulation, such person may be issued a temporary permit for a definite period of time not to exceed one year if the person is legally qualified by licensure to practice geology in his or her own state or country. No right to practice geology shall accrue to such applicant with respect to any other work not set forth in the permit;

(h) Work, which includes subsurface excavation, soil and water analysis, and routine environmental monitoring, such as sample collection and water level gauging, performed by an organization for itself and in accordance with other requirements of law, ~~which does not require geologic analysis~~;

(i) The work of employees of a political subdivision or state agency charged with natural resources conservation performing, in accordance with other requirements of law, their customary duties in operations, maintenance, and environmental monitoring;

(j) The work of employees and agents of a political subdivision or

rural electric cooperative performing, in accordance with other requirements of law, their customary duties in routine utility line construction, operations, and maintenance; and

(k) Work customarily performed by chemists, hydrologists, archeologists, geographers, pedologists, agronomists, and soil scientists;

(l) Work for which state approval or permitting is required, if such activity is in accordance with other requirements of law, rules, or regulations pertaining to the use of a geologist; and

(m) Work performed in the construction of water wells as defined in section 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells.

(2) If the board determines with respect to a particular function that the public is adequately protected without the necessity of a professional geologist performing certain services, the board may waive the requirements of the act with respect to the function.

(3) This section shall not be construed so as to prohibit the testimony of any individual before the Nebraska Oil and Gas Conservation Commission.

Sec. 32. Sections 31 and 33 of this act become operative on January 1, 1999. The other sections of this act become operative on their effective date.

Sec. 33. Original section 88, Legislative Bill 1161, Ninety-fifth Legislature, Second Session, 1998, is repealed.

Sec. 34. Original sections 81-1501 to 81-1503, 81-1506 to 81-1508.02, 81-1511, 81-1512, and 81-1532, Reissue Revised Statutes of Nebraska, section 46-257, Revised Statutes Supplement, 1996, and sections 81-1504 and 81-1505, Revised Statutes Supplement, 1997, are repealed.

Sec. 35. Since an emergency exists, this act takes effect when passed and approved according to law.