

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 413**

FINAL READING

Introduced by Mello, 5.

Read first time January 16, 2015

Committee: Natural Resources

1 A BILL FOR AN ACT relating to environmental protection; to amend sections  
2 81-1504, 81-1505, 81-1532, and 81-15,153, Reissue Revised Statutes  
3 of Nebraska; to provide powers and duties for the Department of  
4 Environmental Quality and the Environmental Quality Council; to  
5 provide for an evaluation as prescribed when issuing permits to  
6 political subdivisions under the federal Clean Water Act; to create  
7 a fund; to provide for procedures, fees, and costs; to provide  
8 funding assistance under the Wastewater Treatment Facilities  
9 Construction Assistance Act; to harmonize provisions; and to repeal  
10 the original sections.  
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1504, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 81-1504 The department shall have and may exercise the following  
4 powers and duties:

5 (1) To exercise exclusive general supervision of the administration  
6 and enforcement of the Environmental Protection Act, the Integrated Solid  
7 Waste Management Act, the Livestock Waste Management Act, and all rules  
8 and regulations and orders promulgated under such acts;

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

12 (3) To advise and consult, cooperate, and contract with other  
13 agencies of the state, the federal government, and other states, with  
14 interstate agencies, and with affected groups, political subdivisions,  
15 and industries in furtherance of the purposes of the acts;

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

25 (5) To encourage, participate in, or conduct studies,  
26 investigations, research, and demonstrations relating to air, land, and  
27 water pollution and causes and effects, prevention, control, and  
28 abatement of such pollution as it may deem advisable and necessary for  
29 the discharge of its duties under the Environmental Protection Act, the  
30 Integrated Solid Waste Management Act, and the Livestock Waste Management  
31 Act, using its own staff or private research organizations under

1 contract;

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

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

10 (8) To administer state grants to political subdivisions for solid  
11 waste disposal facilities and for the construction of sewage treatment  
12 works and facilities to dispose of water treatment plant wastes;

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

19 (10) To require submission of plans, specifications, and other data  
20 relative to, and to inspect construction of, disposal systems or any part  
21 thereof prior to issuance of such permits or approvals as are required by  
22 the Environmental Protection Act, the Integrated Solid Waste Management  
23 Act, and the Livestock Waste Management Act;

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

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

1           (13) To exercise all incidental powers necessary to carry out the  
2 purposes of the Environmental Protection Act, the Integrated Solid Waste  
3 Management Act, and the Livestock Waste Management Act;

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

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

16           (b) To require, for purposes of developing or assisting the  
17 development of any regulation or enforcing any of the provisions of the  
18 Environmental Protection Act which pertain to hazardous waste, any person  
19 who generates, stores, treats, transports, disposes of, or otherwise  
20 handles or has handled hazardous waste, upon request of any officer,  
21 employee, or representative of the department, to furnish information  
22 relating to such waste and any permit involved. Such person shall have  
23 access at all reasonable times to a copy of all results relating to such  
24 waste;

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

28           (17) To encourage voluntary cooperation by persons and affected  
29 groups to achieve the purposes of the Environmental Protection Act, the  
30 Integrated Solid Waste Management Act, and the Livestock Waste Management  
31 Act;

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

5           (19) To consult with any person proposing to construct, install, or  
6 otherwise acquire an air, land, or water contaminant source or a device  
7 or system for control of such source, upon request of such person,  
8 concerning the efficacy of such device or system or concerning the air,  
9 land, or water pollution problem which may be related to the source,  
10 device, or system. Nothing in any such consultation shall be construed to  
11 relieve any person from compliance with the Environmental Protection Act,  
12 the Integrated Solid Waste Management Act, the Livestock Waste Management  
13 Act, rules and regulations in force pursuant to the acts, or any other  
14 provision of law;

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

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

22           (22) To receive or initiate complaints of air, water, or land  
23 pollution, hold hearings in connection with air, water, or land  
24 pollution, and institute legal proceedings in the name of the state for  
25 the control or prevention of air, water, or land pollution, and for the  
26 recovery of penalties, in accordance with the Environmental Protection  
27 Act, the Integrated Solid Waste Management Act, and the Livestock Waste  
28 Management Act;

29           (23) To delegate, by contract with governmental subdivisions which  
30 have adopted local air, water, or land pollution control programs  
31 approved by the council, the enforcement of state-adopted air, water, or

1 land pollution control regulations within a specified region surrounding  
2 the jurisdictional area of the governmental subdivisions. Prosecutions  
3 commenced under such contracts shall be conducted by the Attorney General  
4 or county attorneys as provided in the Environmental Protection Act, the  
5 Integrated Solid Waste Management Act, and the Livestock Waste Management  
6 Act;

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

12 (25) To develop and enforce compliance schedules, under such  
13 conditions as the director may prescribe and consistent with the  
14 standards, rules, and regulations adopted by the council, to prevent,  
15 control, or abate pollution;

16 (26) To employ the Governor's Keep Nebraska Beautiful Committee for  
17 such special occasions and projects as the department may decide.  
18 Reimbursement of the committee shall be made from state and appropriate  
19 federal matching funds for each assignment of work by the department as  
20 provided in sections 81-1174 to 81-1177;

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

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

31 (29) To establish the position of public advocate to be located

1 within the department to assist and educate the public on departmental  
2 programs and to carry out all duties of the ombudsman as provided in the  
3 Clean Air Act, as amended, 42 U.S.C. 7661f;

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

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

15 (32) To consider the risk to human health and safety and to the  
16 environment in evaluating and approving plans for remedial action; ~~and -~~

17 (33) To evaluate permits proposed to be issued to any political  
18 subdivision under the National Pollutant Discharge Elimination System  
19 created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., as  
20 provided in section 3 of this act.

21 Sec. 2. Section 81-1505, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 81-1505 (1) In order to carry out the purposes of the Environmental  
24 Protection Act, the Integrated Solid Waste Management Act, and the  
25 Livestock Waste Management Act, the council shall adopt and promulgate  
26 rules and regulations which shall set standards of air, water, and land  
27 quality to be applicable to the air, waters, and land of this state or  
28 portions thereof. Such standards of quality shall be such as to protect  
29 the public health and welfare. The council shall classify air, water, and  
30 land contaminant sources according to levels and types of discharges,  
31 emissions, and other characteristics which relate to air, water, and land

1 pollution and may require reporting for any such class or classes. Such  
2 classifications and standards made pursuant to this section may be made  
3 for application to the state as a whole or to any designated area of the  
4 state and shall be made with special reference to effects on health,  
5 economic and social factors, and physical effects on property. Such  
6 standards and classifications may be amended as determined necessary by  
7 the council.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

31           (iv) Standards for design and use of production facilities, which

1 shall include, but not be limited to, all wells, pumping equipment,  
2 surface structures, and associated land required for operation of  
3 injection or production wells; and

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

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

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

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

30 (d) For the purpose of this subsection, unless the context otherwise  
31 requires, restoration shall mean the employment, during and after an

1 activity, of procedures reasonably designed to control, minimize, and  
2 eliminate hazards to humans, animals, and the environment, to protect the  
3 public health and welfare and air, land, water, and subsurface resources,  
4 and to return each resource to a quality of use consistent with the uses  
5 for which the resource was suitable prior to the activity.

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

14 (11) In adopting regulations for the issuance of permits under the  
15 National Pollutant Discharge Elimination System created by the Clean  
16 Water Act, as amended, 33 U.S.C. 1251 et seq., the council shall consider  
17 when such permits shall be required and exemptions, application and  
18 filing requirements, terms and conditions affecting such permits, notice  
19 and public participation, duration and review of such permits, the  
20 evaluation provided for under section 3 of this act, and monitoring,  
21 recording, and reporting under the system.

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

24 (a) A construction permit program which requires the owner or  
25 operator of an air contaminant source to obtain a permit prior to  
26 construction. Application fees shall be according to section 81-1505.06;

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

31 (c) Provisions for operating permits to be issued after public

1 notice, to be terminated, modified, or revoked for cause, and to be  
2 modified to incorporate new requirements;

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

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

26 (f) Classification of air quality control regions;

27 (g) Standards for air quality that may be established based upon  
28 protection of public health and welfare, emission limitations established  
29 by the United States Environmental Protection Agency, and maximum  
30 achievable control technology standards for sources of toxic air  
31 pollutants. For purposes of this subdivision, maximum achievable control

1 technology standards shall mean an emission limit or control technology  
2 standard which requires the maximum degree of emission reduction that the  
3 council, taking into consideration the cost of achieving such emission  
4 reduction, any health and environmental impacts not related to air  
5 quality, and energy requirements, determines is achievable for new or  
6 existing sources in the category or subcategory to which the standard  
7 applies through application of measures, processes, methods, systems, or  
8 techniques, including, but not limited to, measures which accomplish one  
9 or a combination of the following:

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

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

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

16 (h) Restrictions on open burning and fugitive emissions;

17 (i) Provisions for issuance of general operating permits, after  
18 public notice, for sources with similar operating conditions and for  
19 revoking such general authority to specific permittees;

20 (j) Provisions for implementation of any emissions trading programs  
21 as defined by the department. Such programs shall be consistent with the  
22 Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and administered  
23 through the operating permit program;

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

26 (l) Provisions for periodic reporting of emissions;

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

30 (n) Time schedules for compliance;

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

1 emissions;

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

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

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

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

1           In considering closure and postclosure of hazardous waste treatment,  
2 storage, or disposal facilities, the council shall consider regulations  
3 that would result in the owner or operator closing his or her facility so  
4 as to minimize the need for future maintenance, and to control, minimize,  
5 or eliminate, to the extent necessary to protect humans, animals, and the  
6 environment, postclosure escape of hazardous waste, hazardous waste  
7 constituents, and leachate to the ground water or surface waters, and to  
8 control, minimize, or eliminate, to the extent necessary to protect  
9 humans, animals, and the environment, waste decomposition to the  
10 atmosphere. In considering corrective action for hazardous waste  
11 treatment, storage, or disposal facilities, the council shall consider  
12 regulations that would require the owner or operator, or any previous  
13 owner or operator with actual knowledge of the presence of hazardous  
14 waste at the facility, to undertake corrective action or such other  
15 response measures necessary to protect human health or the environment  
16 for all releases of hazardous waste or hazardous constituents from any  
17 treatment, storage, or disposal facility or any solid waste management  
18 unit at such facility regardless of the time at which waste was placed in  
19 such unit.

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

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



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

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

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

30 (14) In adopting regulations governing discharges or emissions of  
31 oil and other hazardous materials into the waters, in the air, or upon

1 the land of the state, the council shall consider the requirements of the  
2 Integrated Solid Waste Management Act, methods for prevention of such  
3 discharges or emissions, and the responsibility of the discharger or  
4 emitter for cleanup, toxicity, degradability, and dispersal  
5 characteristics of the substance.

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

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

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

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

16 (d) A term of up to ten years for such permits;

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

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

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

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

30 (i) Exemptions from permits of the department; and

31 (j) The Integrated Solid Waste Management Act.

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

10           (17) Prior to adopting, amending, or repealing standards and  
11 classifications of air, water, and land quality and rules and regulations  
12 under the Integrated Solid Waste Management Act or the Livestock Waste  
13 Management Act, the council shall, after due notice, conduct public  
14 hearings thereon. Notice of public hearings shall specify the waters or  
15 the area of the state for which standards of air, water, or land are  
16 sought to be adopted, amended, or repealed and the time, date, and place  
17 of such hearing. Such hearing shall be held in the general area to be  
18 affected by such standards. Such notice shall be given in accordance with  
19 the Administrative Procedure Act.

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

1 standards established therefor by the council.

2 (19) All standards of quality of air, water, or land and all rules  
3 and regulations adopted pursuant to law by the council prior to May 29,  
4 1981, and applicable to specified air, water, or land are hereby approved  
5 and adopted as standards of quality of and rules and regulations for such  
6 air, water, or land.

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

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

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

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

31 (ii) A deposit of cash, negotiable bonds of the United States or the

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

7 (iii) An established escrow account; or

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

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

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

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

29 (22) The council shall adopt and promulgate rules and regulations no  
30 more stringent than the provisions of section 1453 et seq. of the federal  
31 Safe Drinking Water Act, as amended, 42 U.S.C. 300j-13 et seq., for

1 public water system source water assessment programs.

2 The council may adopt and promulgate rules and regulations to  
3 implement a source water petition program no more stringent than section  
4 1454 et seq. of the federal Safe Drinking Water Act, as amended, 42  
5 U.S.C. 300j-14 et seq.

6 Sec. 3. (1) In issuing permits to any political subdivision under  
7 the National Pollutant Discharge Elimination System created by the Clean  
8 Water Act, as amended, 33 U.S.C. 1251 et seq., the department may  
9 exercise all possible discretion allowed by the United States  
10 Environmental Protection Agency to enable the political subdivision to  
11 maintain environmental infrastructure while improving water quality in a  
12 manner that is sustainable and within the financial capability of the  
13 political subdivision. In exercising such discretion, the department may,  
14 when requested by a political subdivision, undertake an evaluation and  
15 make a determination of the necessity of specific permit terms and  
16 conditions to achieve water quality objectives. Such determination may  
17 affect the level of water treatment or pollution control, the length of  
18 time necessary for compliance, or both. Any political subdivision may  
19 request this evaluation and determination from the department in the  
20 issuance or reissuance of its permit.

21 (2) The department may include, but is not limited to, consideration  
22 of the following factors in making its evaluation and determination under  
23 subsection (1) of this section:

24 (a) The financial capability of a political subdivision to raise and  
25 secure necessary funding at a reasonable cost;

26 (b) The affordability for ratepayers for implementation of pollution  
27 control options available to a political subdivision using the most  
28 appropriate methodology and measurements for the political subdivision in  
29 making such affordability determination;

30 (c) The future growth potential and projections of a political  
31 subdivision and whether its infrastructure is sufficient for projected

1 needs;

2 (d) The overall costs and environmental benefits of control  
3 technologies;

4 (e) Other environmental improvement investments made by a political  
5 subdivision; and

6 (f) Any other relevant economic and social concerns or environmental  
7 conditions.

8 Sec. 4. The Environmental Infrastructure Sustainability Fund is  
9 created. The fund shall be administered by the department. Revenue from  
10 the following sources shall be credited to the fund: (1) Application fees  
11 collected under section 5 of this act; (2) reimbursements for actual  
12 costs necessary to complete environmental infrastructure sustainability  
13 evaluations as authorized under section 3 of this act; (3) supplemental  
14 environmental projects resulting from enforcement settlements; and (4)  
15 gifts, grants, reimbursements, or appropriations from any source intended  
16 to be used for purposes of section 3 of this act. The fund shall be used  
17 by the department to offset costs related to the completion of  
18 environmental infrastructure sustainability evaluations as authorized by  
19 section 3 of this act. Any money in the fund available for investment  
20 shall be invested by the state investment officer pursuant to the  
21 Nebraska Capital Expansion Act and the Nebraska State Funds Investment  
22 Act.

23 Sec. 5. Any political subdivision requesting an evaluation  
24 authorized under section 3 of this act shall submit a request on a form  
25 approved by the department and provide the department with an application  
26 fee not to exceed five thousand dollars. If the costs of the department  
27 exceed the initial deposit, the department and political subdivision  
28 shall enter into an agreement establishing a schedule for the payment of  
29 additional costs by the political subdivision. After the completion of  
30 the environmental infrastructure sustainability evaluation, any balance  
31 of funds paid under this section shall be refunded to the political

1 subdivision.

2       Sec. 6. The council shall adopt and promulgate rules and  
3 regulations to establish a tiered application fee schedule to be charged  
4 to political subdivisions requesting an environmental infrastructure  
5 sustainability evaluation as authorized under section 3 of this act. The  
6 rules and regulations shall take into account the population of a  
7 political subdivision and any financial hardship that may impact the  
8 ability to pay the application fee.

9       Sec. 7. Section 81-1532, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11       81-1532 Sections 81-1501 to 81-1532 and sections 3 to 6 of this act  
12 shall be known and may be cited as the Environmental Protection Act.

13       Sec. 8. Section 81-15,153, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15       81-15,153 The department shall have the following powers and duties:

16       (1) The power to establish a program to make loans to municipalities  
17 or to counties, individually or jointly, for construction or modification  
18 of publicly owned wastewater treatment works in accordance with the  
19 Wastewater Treatment Facilities Construction Assistance Act and the rules  
20 and regulations of the council adopted and promulgated pursuant to such  
21 act;

22       (2) The power to establish a program to make loans to municipalities  
23 or to counties for construction, rehabilitation, operation, or  
24 maintenance of nonpoint source control systems in accordance with the  
25 Wastewater Treatment Facilities Construction Assistance Act and the rules  
26 and regulations of the council adopted and promulgated pursuant to such  
27 act;

28       (3) The power, if so authorized by the council pursuant to section  
29 81-15,152, to execute and deliver documents obligating the Wastewater  
30 Treatment Facilities Construction Loan Fund and the assets thereof to the  
31 extent permitted by section 81-15,151 to repay, with interest, loans to



1 or deposits into the fund and to execute and deliver documents pledging  
2 to the extent permitted by section 81-15,151 all or part of the fund and  
3 its assets to secure, directly or indirectly, the loans or deposits;

4 (4) The power to establish the linked deposit program to promote  
5 loans for construction, rehabilitation, operation, or maintenance of  
6 nonpoint source control systems in accordance with the Wastewater  
7 Treatment Facilities Construction Assistance Act and the rules and  
8 regulations adopted and promulgated pursuant to such act;

9 (5) The duty to prepare an annual report for the Governor and the  
10 Legislature containing information which shows the financial status of  
11 the program. The report submitted to the Legislature shall be submitted  
12 electronically;

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

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

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

19 (c) Accounting for disbursements made by the fund; and

20 (d) Balancing the fund at the beginning and end of the accounting  
21 period;

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

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

28 (9) The power to refinance debt obligations of municipalities in  
29 accordance with the rules and regulations adopted and promulgated by the  
30 council;

31 (10) The power to enter into required agreements with the United

1 States Environmental Protection Agency pursuant to the Clean Water Act;

2 (11) The power to enter into agreements to provide grants concurrent  
3 with loans to municipalities with populations of ten thousand inhabitants  
4 or less which demonstrate serious financial hardships. The department may  
5 authorize grants for up to one-half of the eligible project cost. Such  
6 grants shall contain a provision that payment of the amount allocated is  
7 conditional upon the availability of appropriated funds;

8 (12) The power to authorize emergency grants to municipalities with  
9 wastewater treatment facilities which have been damaged or destroyed by  
10 natural disaster or other unanticipated actions or circumstances. Such  
11 grants shall not be used for routine repair or maintenance of facilities;

12 (13) The power to provide financial assistance to municipalities  
13 with populations of ten thousand inhabitants or less for completion of  
14 engineering studies, research projects, investigating low-cost options  
15 for achieving compliance with the Clean Water Act, encouraging wastewater  
16 reuse, and conducting other studies for the purpose of enhancing the  
17 ability of communities to meet the requirements of the Clean Water Act.  
18 The department may authorize financial assistance for up to ninety  
19 percent of the eligible project cost. Such state allocation shall contain  
20 a provision that payment of the amount obligated is conditional upon the  
21 availability of appropriated funds; ~~and~~

22 (14) The power to provide grants or an additional interest subsidy  
23 on loans for municipalities if the project contains a sustainable  
24 community feature, measurable energy-use reductions, or low-impact  
25 development or if there are any special assistance needs as determined  
26 under section 3 of this act; and

27 (15 14) Such other powers as may be necessary and appropriate for  
28 the exercise of the duties created under the Wastewater Treatment  
29 Facilities Construction Assistance Act.

30 Sec. 9. Original sections 81-1504, 81-1505, 81-1532, and 81-15,153,  
31 Reissue Revised Statutes of Nebraska, are repealed.