

LEGISLATIVE BILL 114

Approved by the Governor May 20, 1987

Introduced by Landis, 46; Ashford, 6; Lynch, 13;
Korshoj, 16

AN ACT relating to hazardous waste; to amend sections 81-1521.01 to 81-1521.03, 81-1521.05, and 81-1521.06, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1505.01, 81-1521.04, and 81-1532, Revised Statutes Supplement, 1986; to provide additional requirements and procedures related to the siting of commercial hazardous waste management facilities; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 81-1505.01, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1505.01. There is hereby created the Department of Environmental Control Cash Fund which shall be used to pay the expenses of the department. All fees collected by the department pursuant to subsection (9) of section 81-1505 and section 3 of this act shall be paid into the state treasury and credited by the State Treasurer to the fund. Any fee collected pursuant to section 3 of this act shall be used to pay the expenses related to the notice of intent for which the fee was paid. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 2. For purposes of sections 2 to 17 of this act, unless the context otherwise requires:

(1) Chief executive officer shall mean the mayor, city manager, or chairperson of the board of trustees of a municipality;

(2) Commercial hazardous waste management facility shall mean a hazardous waste management facility which accepts hazardous waste for treatment, storage, or disposal which is generated by any person other than the person which owns or operates such facility;

(3) Committee shall mean the specific site review committee established in response to a notice of

intent filed pursuant to section 3 of this act:

(4) Hazardous waste management facility shall mean all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of hazardous waste. A hazardous waste management facility may consist of several treatment, storage, or disposal operational units such as one or more landfills or surface impoundments or any combination of such operational units;

(5) Municipality shall mean an incorporated city or village; and

(6) Other definitions found in section 81-1502 shall apply.

Sec. 3. (1) Commencing on the effective date of this act, any person who desires a permit for a commercial hazardous waste management facility shall, at least one hundred eighty days prior to making application therefor, file a notice of intent with the director on a form provided by the director. The notice of intent shall include such information as prescribed by the director and shall be accompanied by a fee established by the department in an amount sufficient, but not in excess of the amount necessary, to pay the department for the direct and indirect costs of processing the notice of intent and to pay the costs and expenses specified in section 6 of this act. Within fifteen days of receipt of a notice of intent, the director shall notify the appropriate local officials and shall establish a specific site review committee. The purpose of establishing the committee shall be to provide for early public involvement in the consideration of a proposed facility.

(2) The director may appoint a designee to carry out duties assigned to the director related to a notice of intent or an application for a permit except the duty to make the decision required by section 13 of this act.

Sec. 4. (1) The committee shall consist of twelve members, six of whom shall be local members and six of whom shall be regional members.

(2) The six local members shall be chosen as follows:

(a) If the proposed facility will be located within the zoning jurisdiction of a municipality, the chief executive officer of the municipality shall appoint six members who reside within such zoning jurisdiction;

(b) If the proposed facility will be located

in an unincorporated area which is within five miles of the zoning jurisdiction of one or more municipalities, the chief executive officer of each such municipality shall appoint a member who resides within the zoning jurisdiction of the respective municipality and the chairperson of the county board of the county in which the facility would be located shall appoint additional members who reside within five miles of the proposed facility for a total of six members; and

(c) If the proposed facility will be located in an unincorporated area which is more than five miles from the zoning jurisdiction of any municipality, the chairperson of the county board of the county in which the facility would be located shall appoint six members who reside within five miles of the proposed facility.

(3) The six regional members shall be appointed by the director to represent various interests affected by a proposed facility and shall include at least one environmental representative, one academic expert, one industry representative, one community planner, one representative of public interest groups, and one representative of the medical community. The regional members shall be appointed for two-year terms and shall serve whenever a committee is needed during that time. Alternates shall be appointed to serve in case a regional member is unable to do so or is already serving on a committee.

Sec. 5. The director shall organize a meeting of the committee within twenty-one days of the filing of a notice of intent by an applicant. The director shall serve as temporary chairperson of the committee and shall select as a professional facilitator a person trained in group dynamics and objectivity to handle committee meetings with the public and the applicant. At its first meeting, the committee shall select a chairperson and any other officers it deems necessary and shall adopt procedures for gathering information and preparing a report. The committee shall hold factfinding meetings near the proposed site for the facility. The applicant shall make a technical advisor and other resource people available to the committee.

Sec. 6. The department shall provide a secretary and other staff persons to assist the committee. The applicant shall pay the expenses for such clerical and other help and the salary of the professional facilitator, shall pay the costs of printing the committee's report, and shall reimburse the committee members for their mileage expenses at the rate provided in section 84-306.03 for state employees. The

department shall keep a record of all such costs and expenses and assess the applicant for any amount over the estimated amount on which the fee paid by the applicant was based.

Sec. 7. Factors to be considered by the committee shall include, but not be limited to:

(1) Economic considerations such as whether the facility is needed, profit expectations for the facility, how the facility will be operated, effects on the community, the potential for compensation to the local governing body, and aspects related to closure of the facility;

(2) The function of the facility, including the management processes involved, the wastes to be handled, the relationship to any integrated system or master plan for hazardous waste management, and plans for future expansion;

(3) Considerations related to the technology to be used such as why that process was chosen, plans for quality control, reliability of the technology, and the sequence of steps involved from generation of the wastes to postclosure of the facility;

(4) Characteristics of the site for the facility, the methods for determining the characteristics, and why the site was chosen;

(5) Surface drainage, ground water protection, air emissions, and other factors related to environmental quality;

(6) Transportation considerations such as methods to be used, waste containment during transport, party responsible for transport, timing of arrivals, routing, and response plans in case of spills;

(7) Plans for responses to emergencies and for site security, qualifications and training of personnel, and actions to be taken when there are operating problems; and

(8) Enforcement provisions, including applicable regulations, monitoring plans, who is responsible for enforcement, sequence and timing of possible enforcement, and the ability of governmental agencies to ensure compliance.

Sec. 8. The committee shall issue a report no later than one hundred eighty days from the date the notice of intent is filed, except that the deadline may be extended by mutual agreement between the applicant and the committee. The report shall document the discussion of community concerns raised during review by the committee of the proposed commercial hazardous waste management facility, including identification and

discussion of the issues which were resolved, the issues which were not resolved, and the questions which were not answered, including the reasons they were not answered.

The report may also include recommendations on the compensation which the applicant should pay or provide to the local governing body. Any recommendations shall be subject to further negotiations between the applicant and the local governing body.

Copies of the report shall be made available to committee members, the department, the applicant, and the public.

After issuance of its report, the committee shall have no further duties, except that the department may ask the committee to review any changes related to the proposed commercial hazardous waste management facility which are proposed by the applicant and to amend its report if appropriate.

Sec. 9. That section 81-1521.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521-01- (1) Any person desiring a license to operate a hazardous waste disposal area. At the conclusion of the process involving the committee, the person desiring a permit for a commercial hazardous waste management facility shall make application therefor to the director on a form provided by the director. (2) The application shall contain the name and residence of the applicant, the location of the proposed hazardous waste disposal area facility, and such other information as may be necessary and shall be accompanied by a copy of the committee's report and any written response by the applicant to such report.

Sec. 10. If the application for a commercial hazardous waste management facility contains all of the information required by the department, the director shall send a copy of the application, of the committee's report, and of any response by the applicant to the report to the county board of the county if the proposed facility will be located outside the zoning jurisdiction of a city or village or to the city council or board of trustees if it will be located within the zoning jurisdiction of a city or village. A hearing shall be held by the county board, city council, or board of trustees within forty-five days of receipt of the copy of the application.

Sec. 11. That section 81-1521.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521-02- (1) Before the director shall approve a new hazardous waste disposal area it shall be approved by the county board of the county if the area is outside the zoning jurisdiction of a city or village, or by the city council or board of trustees if within the zoning jurisdiction of a city or village. The director shall send a copy of the application to the county board, city council, or board of trustees advising it of the application filed with the director together with the department's recommendation on whether the proposed disposal area can be made environmentally acceptable. A hearing shall be held by the county board, city council, or board of trustees within forty-five days from receipt of the copy of the application.

(2) Before the county board, city council, or board of trustees approves shall approve such area or disapproves a proposed commercial hazardous waste management facility, notice shall be given once at least thirty days but not more than forty days before the hearing and a second time at least ten days before the hearing. Such notice shall be given by publication of a notice in a newspaper either published in or having general circulation in the county, city, or village where the proposed area facility is to be located. A copy of the printed notice and shall state the time and place of hearing, the name of the applicant for a permit for such area, and the exact location of the area proposed facility. In deciding whether to approve or disapprove such area facility, the county board, city council, or board of trustees shall determine if such area facility will be in compliance with its zoning laws or violate any local ordinances or resolutions. The local governing body shall then make its decision within one hundred eighty days of receipt of a copy of the application from the director and shall notify the department and the applicant of its action. If the local governing body disapproves the application, it shall specify its reasons for disapproval. If the local governing body disapproves the application, the department may not take further action on the application unless the disapproval is reversed by court order. For purposes of appeal, the decision of the local governing body to disapprove the application shall be deemed a final order.

(3) If the applicant obtains the approval of the local governing body, he or she shall contact the department concerning site preparation and any engineering problems which may exist. Prior to

obtaining the license, the director or his or her designated representative shall inspect the proposed area and determine if the proposed operation complies with the provisions of sections 81-1501 to 81-1533 and 19-4101 to 19-4122, and all rules, regulations, and standards promulgated thereunder.

Sec. 12. The disapproval decision made by the local governing body may be appealed to district court. The court may affirm the decision or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the local governing body;
- (3) Made upon unlawful procedure;
- (4) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or
- (5) Arbitrary or capricious.

Sec. 13. Following approval action by the local governing body, the director shall determine if the proposed facility complies with the provisions of the Environmental Protection Act and all rules, regulations, and standards promulgated pursuant to such act. The review shall include, but not be limited to, consideration of factors related to air quality, water quality, waste management, and hydrogeology and of the environmental risks and benefits to the vicinity in which the facility would be located. Each person in the department who reviews the application shall prepare and sign a written statement for evaluation by the director who shall decide whether to approve or disapprove the application.

Sec. 14. That section 81-1521.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521-03. The department shall notify all municipalities within ten miles of the proposed hazardous waste disposal area of such application together with the director's proposed decision of approval or disapproval by one publication of a notice in a newspaper. The department shall publish notice of an application for a permit for a commercial hazardous waste management facility, together with the action taken by the local governing body, the director's decision, and whether the permit will be granted or denied, in a legal newspaper either published in or having general circulation in the region vicinity

affected. A copy of such notice shall also be provided to the applicant. The public may comment or request a public hearing within thirty days after the date such information is made available, and the director may, within his or her discretion, hold a hearing on the granting or denial of the license permit if he or she determines that the circumstances justify it.

Prior to issuing the license permit, the director must shall find that the applicant has completed site preparation, is a responsible and suitable person to conduct the business, and that the proposed facility complies with the provisions specified in section 13 of this act and has the requisite approval of the local governing body. Permit conditions established by the department shall supersede any ordinances, resolutions, regulations, or requirements of the local governing body, then or thereafter in effect, which are inconsistent with such conditions.

Sec. 15. That section 81-1521.04, Revised Statutes Supplement, 1986, be amended to read as follows:

81-1521-04- As a condition of granting a permit for or license to operate any commercial hazardous waste management facility, the permittee or licensee shall provide proof of financial responsibility pursuant to subdivision (21)(a) of section 81-1505 and liability insurance, including coverage against nonsudden and accidental occurrences, in an amount determined by the director.

Sec. 16. That section 81-1521.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521-05- Permits Licenses shall expire five years following the date of issuance but may be renewed if the licensee permittee has complied with the provisions of the Environmental Protection Act this act and the rules and regulations promulgated thereunder.

Sec. 17. That section 81-1521.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1521-06- The director may revoke the license permit for a commercial hazardous waste management facility, pursuant to subsection (3) of section 81-1507, if he or she finds that the hazardous waste disposal area facility is not being operated in accordance with the provisions of this act Environmental Protection Act and rules and regulations promulgated thereunder.

Sec. 18. That section 81-1532, Revised

Statutes Supplement, 1986, be amended to read as follows:

81-1532. Sections 81-1501 to 81-1533 and sections 2 to 17 of this act shall be known and may be cited as the Environmental Protection Act.

Sec. 19. This act shall become operative on June 30, 1988.

Sec. 20. That original sections 81-1521.01 to 81-1521.03, 81-1521.05, and 81-1521.06, Reissue Revised Statutes of Nebraska, 1943, and sections 81-1505.01, 81-1521.04, and 81-1532, Revised Statutes Supplement, 1986, are repealed.