

LEGISLATIVE BILL 619

Approved by the Governor March 27, 1989

Introduced by Natural Resources Committee, Schmit, 23,
Chairperson; Elmer, 38; Lamb, 43; Beck, 8;
Morrissey, 1; Weihing, 48

AN ACT relating to chemigation; to amend sections 46-1124, 46-1126, and 46-1138, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to inspections, the authority to order suspension of the operation of a system, and other enforcement powers; and to repeal the original sections.

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

Section 1. That section 46-1124, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1124. (1) Each district shall conduct areawide, selective, and periodic inspections to insure compliance with the Nebraska Chemigation Act and rules and regulations adopted and promulgated under the act. A permitholder or any person believed by the district to be chemigating without a required permit shall be notified by the district of the district's right and intent to inspect the premises concerned. ~~Employees~~ Authorized representatives of the district and the department shall have access at all reasonable times to inspect ~~such a chemigation~~ system and to otherwise carry out their duties under the act. Such Prior to inspection such authorized representatives shall make reasonable efforts to obtain consent to inspect from the permitholder, his or her authorized employee, the applicator, or the owner or operator of the system. If consent for inspection is denied, such authorized representatives ~~employees~~ may apply to the district or county court of the county in which the ~~irrigation distribution~~ chemigation system is located for an inspection warrant to require a the permitholder or person believed to be chemigating without a required permit to allow the employees authorized representatives to enter onto his or her land to carry out their duties under the act or the rules and regulations.

(2) No person shall refuse entry or access to any authorized representative of the district or department who requests entry for purposes of inspection

and who presents appropriate credentials and an inspection warrant, and 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 emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant. If requested, the permitholder, applicator, or person chemigating without a required permit shall receive a report specifying all facts found which relate to compliance status.

(3) Entry upon any property pursuant to such ~~the~~ act shall not be considered to be ~~legal~~ trespass, and no damage shall be recoverable on that account alone. Damage to crops caused by the issuance of any order authorized by the act shall not be recoverable on that account alone.

Sec. 2. That section 46-1126, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1126. (1) Before a district denies, ~~renewal of~~ to renew, suspends, or revokes a permit, it shall send to the applicant or permitholder a notice setting forth the specific reasons for the proposed action. The denial, ~~refusal of renewal to~~ renew, suspension, or revocation shall become final ten calendar days after mailing of the notice unless such person, within such ten-day period, gives the district written notice of a request for a hearing. If such a request is made, the applicant or permitholder shall be given an opportunity for a hearing before the board of directors of the district and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the proposed action shall be affirmed or set aside. A copy of such decision setting forth the findings of fact and the specific reasons upon which it is based shall be sent to the applicant or permitholder.

(2) ~~in cases in which~~ If the district or department concludes that there is ~~or may be~~ an actual or imminent threat of danger to persons or the environment by the operation of a chemigation system, the district or department shall immediately ~~suspend order suspension of~~ the operation of the system. Any aggrieved ~~permitholder or applicator person~~ may, within ten days of receipt of an order of suspension pursuant to this section, request a hearing on such order. The hearing shall be held within ten days of receipt of the request. The district or department shall give written

notice of the hearing by certified or registered mail or by personal service to the permitholder, or applicator, or person responsible for the operation of the chemigation system. The district or department shall issue an order addressing the matters raised at the hearing within ten days after the hearing.

If the district or department concludes that the suspension should be continued, the district or department may, if necessary, apply for a restraining order or a temporary or permanent injunction against the permitholder, or applicator, or person responsible for the operation of the chemigation system pursuant to the procedure prescribed by section 46-1138.

Sec. 3. That section 46-1138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-1138. (1) Any person found by the district to be in violation of the Nebraska Chemigation Act or any rules and regulations issued pursuant to the act shall be notified by the district of such violation. Each person so notified by the district shall have ten days in which to comply. The district shall make every reasonable effort to obtain voluntary compliance. Voluntary compliance shall not preclude the district, department, Attorney General, or county attorney from pursuing penalties in the proper court of law based on violations of the act or the rules and regulations. If after such ten-day period the violation has not been corrected, the district shall notify the department of the violation. The department shall make a preliminary investigation. If after such investigation the department determines that there is a violation of the act or rules and regulations, the district or the department shall either revoke the person's chemigation permit until such time as there is satisfactory compliance or issue an order suspending operation of the chemigation system until the required permit is obtained.

(2) The district or department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against the person or persons violating or threatening to violate the Nebraska Chemigation Act or the rules and regulations adopted and promulgated under such act to the district court of the county where the violation is occurring or is about to occur. The court shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(3) If the violation of the Nebraska Chemigation Act occurs with respect to an ~~irrigation distribution system operated by a permit holder~~ a permitted system, a schedule for compliance may be established by the district in lieu of the ten-day compliance requirement.

(4) It shall be the duty of the Attorney General or the county attorney of the county in which such violation occurs or is about to occur, when notified of such violation or threatened violation, to cause appropriate proceedings under ~~subsection (1)~~ of this section to be instituted and pursued without delay.

Sec. 4. That original sections 46-1124, 46-1126, and 46-1138, Reissue Revised Statutes of Nebraska, 1943, are repealed.