AN ACT relating to the Environmental Protection Act; to amend section 81-1505, Reissue Revised Statutes of Nebraska; to change certain notice requirements as prescribed; and to repeal the original section.

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

Section 1. Section 81-1505, Reissue Revised Statutes of Nebraska, is amended to read:

81-1505. (1) In order to carry out the purposes of the Environmental Protection Act, 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., as such section existed on the effective date of this act, 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.

(d) 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. 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., as the act existed on the effective date of this act, 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.

(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., as the act existed on the effective date of this act, 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., as the act existed on the effective date of this act, 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 on a process, stack, storage, or fugitive emission point;

(b) Provisions 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;
(3) Provisions for implementation of the sulfur dioxide allowance
system of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., as the act
existed on the effective date of this act, 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 8-1-1505.04.
(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. In
considering corrective action for hazardous waste treatment, storage, or
disposal facilities, the council shall consider regulations that would require
the owner or operator, or any previous owner or operator with actual knowledge
of the presence of hazardous waste at the facility, to undertake corrective
action or such other response measures necessary to protect human health or
the environment for all releases of hazardous waste or hazardous constituents
from any treatment, storage, or disposal facility or any solid waste
management unit at such facility regardless of the time at which waste was
placed in such unit.
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., as the act
existed on the effective date of this act. (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,
corrosive capability, air conductivity, operation of pressure, ignition, 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., as the act
existed on the effective date of this act.

(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, 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 quality of air, water, or land and rules and regulations to meet any requirements of the National Pollutant Discharge Elimination System in the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., as the act existed on the effective date of this act. _______________________________________________________

Discharge Elimination System in the Clean Water Act, as amended, 33 U.S.C. —— ————————

prohibitions, and quantitative limitations or concentrations which shall in all respects conform with and meet the requirements of the National Pollutant Discharge Elimination System.———————— —— ——— ———————— ——————————

and political subdivisions as the council has reason to believe may be affected by the proposed standards. (a) Published at least twice in a newspaper regularly published or circulated in a county or counties bordering or through which flow the waters of 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; or

(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 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 hereetofore 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., as the act existed on the effective date of this act.

(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, 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 —6—
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 as such section existed on the effective date of this 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, as such section existed on the effective date of this act.
Sec. 2. Original section 81-1505, Reissue Revised Statutes of Nebraska, is repealed.