Nebraska Department of Environmental Quality

Nebraska Environmental Protection Act

And Selected Laws

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Michael J. Linder, Director

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ENVIRONMENTAL PROTECTION ACT

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

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

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

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

(4) To protect human health through environmental enforcement.

Source: Laws 1971, LB 939, § 1; Laws 1987, LB 152, § 1; Laws 1992, LB 1257, § 75; Laws 1994, LB 570, § 4; Laws 1998, LB 1209, § 17.

81-1502. Terms, defined. For purposes of the Environmental Protection Act, unless the context otherwise requires:

(1) Air contaminant or air contamination shall mean the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere;

(2) Air pollution shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, property, or the conduct of business;

(3) Chairperson shall mean the chairperson of the Environmental Quality Council and council shall mean the Environmental Quality Council;

(4) Complaint shall mean any charge, however informal, to or by the council, that any person or agency, private or public, is polluting the air, land, or water or is violating the Environmental Protection Act or any rule or regulation of the department in respect thereof;

(5) Control and controlling shall include prohibition and prohibiting as related to air, land, or water pollution;

(6) Department shall mean the Department of Environmental Quality, which department is hereby created;

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

(8) Disposal system shall mean a system for disposing of wastes, including hazardous wastes, either by surface or underground methods, and includes sewerage systems and treatment works, disposal wells and fields, and other systems;

(9) Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof;

(10) Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity;

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

(12) Sewerage system shall mean pipelines, conduits, pumping stations, force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(13) Treatment works shall mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes;

(14) Wastes shall mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state;

(15) Refuse shall mean putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and solid market and industrial wastes;

(16) Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables, and dead animals rejected by rendering plants;

(17) Rubbish shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety;

(18) Junk shall mean old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material;

(19) Land pollution shall mean the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state;

(20) Water pollution shall mean the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water;

(21) Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all

other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state;

(22) Point source shall mean any discernible confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged;

(23) Effluent limitation shall mean any restriction, including a schedule of compliance, established by the council on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state;

(24) Schedule of compliance shall mean a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

(25) Hazardous waste shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

(26) Solid waste shall mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities, but solid waste shall not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 68 Stat. 923;

(27) Storage, when used in connection with hazardous waste, shall mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste;

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

(29) Processing shall mean to treat, detoxify, neutralize, incinerate, biodegrade, or otherwise process a hazardous waste to remove such waste's harmful properties or characteristics for disposal in accordance with regulations established by the council;

(30) Well shall mean a bored, drilled, or driven shaft or a dug hole, the depth of which is greater than the largest surface dimension of such shaft or hole;

(31) Injection well shall mean a well into which fluids are injected;

(32) Fluid shall mean a material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or other form or state;

(33) Mineral production well shall mean a well drilled to promote extraction of mineral resources or energy, including, but not limited to, a well designed for (a) mining of sulfur by the Frasch process, (b) solution mining of sodium chloride, potash, phosphate, copper, uranium, or any other mineral which can be mined by this process, (c) in situ

combustion of coal, tar sands, oil shale, or any other fossil fuel, or (d) recovery of geothermal energy for the production of electric power. Mineral production well shall not include any well designed for conventional oil or gas production, for use of fluids to promote enhanced recovery of oil or natural gas, or for injection of hydrocarbons for storage purposes;

(34) Mineral exploration hole shall mean a hole bored, drilled, driven, or dug in the act of exploring for a mineral other than oil and gas;

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

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

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

(38) Livestock waste control facility shall have the same meaning as in section 54-2417.

Source: Laws 1971, LB 939, § 2; Laws 1972, LB 1435, § 1;
Laws 1973, LB 538, § 1; Laws 1980, LB 853, § 1;
Laws 1981, LB 216, § 2; Laws 1983, LB 356, § 2;
Laws 1984, LB 742, § 1; Laws 1984, LB 1078, § 1;
Laws 1986, LB 1008, § 1; Laws 1992, LB 1257, § 76;
Laws 1993, LB 121, § 538; Laws 1994, LB 570, § 5;
Laws 1998, LB 1209, § 18; Laws 2004, LB 916, § 25.

81-1503. Environmental Quality Council; membership; appointment; compensation; Director of Environmental Quality; appointment; oath; duties.

(1) (a) The Environmental Quality Council is hereby created.

(b) Until April 28, 2005, the council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows:

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

(ii) One representative of conservation;

(iii) One representative of the agricultural processing industry;

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

(v) One representative of the chemical industry;

(vi) One representative of heavy industry;

(vii) One representative of the power generating industry;

(viii) One representative of agriculture actively engaged in crop production;

(ix) One representative of labor;

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

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

(xii) One representative from county government;

(xiii) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;

(xiv) One representative of the livestock industry; and

(xv) One representative of the public at large.

(c) On and after April 28, 2005, the council shall consist of seventeen members to be appointed by the Governor with the advice and consent of the Legislature as follows:

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

(ii) One representative of conservation;

(iii) One representative of the agricultural processing industry;

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

(v) One representative of the chemical industry;

(vi) One representative of heavy industry;

(vii) One representative of the power generating industry;

(viii) One representative of agriculture actively engaged in crop production;

(ix) One representative of labor;

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

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

(xii) One representative from county government;

(xiii) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;

(xiv) One representative of the livestock industry;

(xv) One representative of minority populations; and

(xvi) One biologist.

(d)(i) Except as otherwise provided in this subdivision, members of the council serving on April 28, 2005, shall continue to serve on the council as representatives of the entity they were appointed to represent until their current terms of office expire and their successors are appointed and confirmed. The member representing the public at large shall serve until the member representing minority populations is appointed.

(ii) The Governor shall appoint members pursuant to subdivisions (1)(c)(xv) and (1)(c)(xvi) of this section within ninety days after April 28, 2005.

(2) Members shall serve for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made. As the term of an appointee to the council expires, the succeeding appointee shall be a representative of the same segment of the public as the previous appointee. In the case of appointees to vacancies occurring from unexpired terms, each successor shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. All members shall be citizens and residents of the State of Nebraska.

(3) Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office but only after delivering to the member a copy of the charges and affording him or her an opportunity to be publicly heard in person or by counsel, in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. When a member is removed, the Governor shall file, in the office of the Secretary of State, a complete statement of all charges made against such member and the findings thereon, together with a complete record of the proceedings.

(4) The council shall elect from its members a chairperson and a vice-chairperson, who shall hold office at the pleasure of the council. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson. The director shall serve as secretary of the council and shall keep all records of meetings of and actions taken by the council. He or she shall be promptly advised as to such actions by the chairperson.

(5) The members of the council, while engaged in the performance of their official duties, shall receive a per diem of forty dollars while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The council shall hold at least four meetings, once each calendar quarter, at a time and place fixed by the council and shall keep a record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairperson. Such special meetings must be called by him or her upon receipt of a written request signed by two or more members of the council. Written notice of the time and place of all meetings shall be mailed in advance to the office of each member of the council by the secretary. A majority of the members of the council shall constitute a quorum.

(7) The council shall submit to the Governor a list of names from which he or she shall appoint the Director of Environmental Quality who shall be experienced in air, water, and land pollution control and who may be otherwise an employee of state government. The director shall be responsible for administration of the department and all standards, rules, and regulations adopted pursuant to Chapter 81, article 15, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act. All such standards, rules, and regulations shall be adopted by the council after consideration of the recommendations of the director. All grants to political subdivisions under the control of the department shall be made by the director in accordance with priorities established by the council. A majority of the members of the council shall constitute a quorum for the transaction of business. The affirmative vote of a majority of all members of the council shall be necessary for the adoption of standards, rules, and regulations.

(8) Before the director enters upon the duties of his or her office, he or she shall take and subscribe to the constitutional oath of office and shall, in addition thereto, swear and affirm that he or she holds no other public office nor any position under any political committee or party, that he or she has not during the two years immediately prior to his or her appointment received a significant portion of his or her income directly or indirectly from permitholders or applicants for a permit under the Environmental Protection Act, and that he or she will not receive such income during his or her term as director, except that such requirements regarding income prior to the term of office shall not apply to employees of any agency of the State of Nebraska or any political subdivision which may be a permitholder under the Environmental Protection Act. Such oath and affirmation shall be filed with the Secretary of State.

Source: Laws 1971, LB 939, § 3; Laws 1972, LB 1435, § 2; Laws 1974, LB 1029, § 1; Laws 1979, LB 321, § 2; Laws 1981, LB 204, § 195; Laws 1983, LB 356, § 3; Laws 1992, LB 1257, § 77; Laws 1998, LB 1209, § 19; Laws 2005, LB 351, § 1.

81-1504. Department; powers; duties. The department shall have and may exercise the following powers and duties:

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

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

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

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

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

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

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

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

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

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

(11) To issue, continue in effect, revoke, modify, or deny permits, under such conditions as the director may prescribe and consistent with the standards, rules, and

regulations adopted by the council, (a) to prevent, control, or abate pollution, (b) for the discharge of wastes into the air, land, or waters of the state, and (c) for the installation, modification, or operation of disposal systems or any parts thereof;

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

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

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

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

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

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

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

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

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

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

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

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

(23) To delegate, by contract with governmental subdivisions which have adopted local air, water, or land pollution control programs approved by the council, the enforcement of state-adopted air, water, or land pollution control regulations within a specified region surrounding the jurisdictional area of the governmental subdivisions. Prosecutions commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

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

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

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

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

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

(29) To establish the position of public advocate to be located within the department to assist and educate the public on departmental programs and to carry out all duties of the ombudsman as provided in the Clean Air Act, as amended, 42 U.S.C. 7661f;

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

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

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

Source: Laws 1971, LB 939, § 4; Laws 1972, LB 1435, § 3; Laws 1973, LB 254, § 1; Laws 1974, LB 1029, § 2; Laws 1979, LB 342, § 1; Laws 1980, LB 853, § 2; Laws 1981, LB 204, § 196; Laws 1983, LB 356, § 4; Laws 1984, LB 1078, § 2; Laws 1986, LB 217, § 15; Laws 1992, LB 1257, § 78; Laws 1994, LB 570, § 6; Laws 1996, LB 1226, § 13; Laws 1997, LB 622, § 124; Laws 1998, LB 1209, § 20.

81-1504.01. Department of Environmental Quality; reports required; contents. The Department of Environmental Quality shall provide the following information to the Clerk of the Legislature by December 1 of each year:

(1) A report by type of service or aid provided by the use and distribution of federal funds received by the department. The report shall also include user fees, permit fees, license fees, and application fees authorized by the federal Environmental Protection Agency as follows:

(a) Actual expenditure of each grant or authorized fees for the most recently completed state fiscal year, including state matching funds;

(b) Current budget and planned use and distribution of each grant and authorized fees for the current state fiscal year, including state matching funds;

(c) A summary of the projected funding level of each grant and authorized fees and the impact of federal mandates and regulations upon the future use of each grant and authorized fees; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(2) A summary of regulations of the federal Environmental Protection Agency which the department is required to implement and which do not include federal funding assistance and the possible financial impact to the state and political subdivisions;

(3) A report by type of service or aid provided by the use and distribution of state general and cash funds, including user fees, permit fees, license fees, and application fees, to carry out activities that are not funded by federal grants as follows:

(a) Actual expenditure of state funds, by agency sections, for the most recently completed state fiscal year, including a breakdown of expenditures by personal services, operations, travel, capital outlay, and consulting and contractual services;

(b) Current budget and planned use and distribution of state funds, by agency sections, for the current state fiscal year, including a breakdown of expenditures for personal services, operations, travel, capital outlay, and consulting and contractual services;

(c) A summary of projected program funding needs based upon the statutory requirements and public demand for services and the department's assessment of anticipated needs statewide; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(4) A report regarding staff turnover by job class and the department's assessment of its ability to hire and retain qualified staff considering the state's personnel pay plan;

(5) A report listing the method used by each new or existing licensee, permittee, or other person who is required by the department to establish proof of financial responsibility; and

(6) A report of funds credited to the Nebraska Litter Reduction and Recycling Fund under the Nebraska Litter Reduction and Recycling Act.

Source: Laws 1991, LB 528, § 1; Laws 1993, LB 3, § 47;
Laws 1993, LB 203, § 1; Laws 1994, LB 1034, § 2;
Laws 2003, LB 143, § 9.

81-1504.02. Department; establish telephone line. The department shall establish a telephone line to provide information on the department's programs and requirements and to report complaints and suspected violations of the various environmental statutes and regulations which the department administers, as well as complaints regarding the department's regulation and enforcement activities. The department may charge a fee for the use of such a telephone line.

Source: Laws 1998, LB 1209, § 29.

81-1504.03. Grants or loans; restrictions. No disbursements from grants or loans administered pursuant to the Environmental Protection Act shall be made for projects related to tire-derived fuel.

Source: Laws 2001, LB 461, § 9.

81-1505. Council; rules and regulations; standards of air, land, and water quality. (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, 33 U.S.C. 1251 et seq., for certification by the department of activities requiring a federal license or permit which may result in a discharge.

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

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

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

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

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

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

including issuance of permits and proper abandonment, and requirements necessary for proper operation and maintenance thereof.

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

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

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

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

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

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

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

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

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

(d) For the purpose of this subsection, unless the context otherwise requires, restoration shall mean the employment, during and after an activity, of procedures reasonably designed to control, minimize, and eliminate hazards to humans, animals, and the environment, to protect the public health and welfare and air, land, water, and

subsurface resources, and to return each resource to a quality of use consistent with the uses for which the resource was suitable prior to the activity.

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

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

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

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

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

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

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

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

(f) Classification of air quality control regions;

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

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

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

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

(h) Restrictions on open burning and fugitive emissions;

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

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

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

(l) Provisions for periodic reporting of emissions;

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

(n) Time schedules for compliance;

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

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

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

(13)(a) In adopting regulations for hazardous waste management, the council shall give consideration to generation of hazardous wastes, labeling practices, containers used, treatment, storage, collection, transportation including a manifest system, processing, resource recovery, and disposal of hazardous wastes. It shall consider the permitting, licensing, design and construction, and development and operational plans for hazardous waste treatment, storage, and disposal facilities, and conditions for licensing or permitting of hazardous waste treatment, storage, and disposal areas. It shall consider modification, suspension, or revocation of such licenses and permits, including requirements for waste analysis, site improvements, fire prevention, safety, security, restricted access, and covering and handling of hazardous liquids and materials.

Licenses and permits for hazardous waste, treatment, storage, and disposal facilities shall not be issued until certification by the State Fire Marshal as to fire prevention and fire safety has been received by the department. The council shall further consider the need at treatment, storage, or disposal facilities for required equipment, communications and alarms, personnel training, and contingency plans for any emergencies that might arise and for a coordinator during such emergencies.

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

In considering closure and postclosure of hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would result in the owner or operator closing his or her facility so as to minimize the need for future maintenance, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, postclosure escape of hazardous waste, hazardous waste constituents, and leachate to the ground water or surface waters, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, waste decomposition to the atmosphere. 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, 42 U.S.C. 6901 et seq.

(b) In adopting regulations for hazardous waste management, the council shall consider, in addition to criteria in subdivision (a) of this subsection, establishing criteria for (i) identifying hazardous waste including extraction procedures, toxicity, persistence, and degradability in nature, potential for accumulation in tissue, flammability or ignitability, corrosiveness, reactivity, and generation of pressure through decomposition, heat, or other means, and other hazardous characteristics, (ii) listing all materials it deems hazardous and which should be subject to regulation, and (iii) locating treatment, storage, or disposal facilities for such wastes. In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b)(i) of this subsection, no regulation shall be adopted without the approval of the State Fire Marshal.

(c) In adopting regulations for hazardous waste management, the council shall establish a schedule of fees to be paid to the director by licensees or permittees operating hazardous waste processing facilities or disposal areas on the basis of a monetary value per cubic foot or per pound of the hazardous wastes, sufficient but not exceeding the amount necessary to reimburse the department for the costs of monitoring such facilities or areas during and after operation of such facilities or areas. The licensees may assess a cost against persons using the facilities or areas. The director

shall remit any money collected from fees paid to him or her to the State Treasurer who shall credit the entire amount thereof to the General Fund.

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

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

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

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

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

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

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

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

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

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

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

(i) Exemptions from permits of the department; and

(j) The Integrated Solid Waste Management Act.

(16) Any person operating or responsible for the operation of air, water, or land contaminant sources of any class for which the rules and regulations of the council require reporting shall make reports containing information as may be required by the department concerning quality and quantity of discharges and emissions, location, size,

and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of discharges and emissions, and such other information as is relevant to air, water, or land pollution and is available.

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

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

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

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

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

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

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

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

(iii) An established escrow account; or

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

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

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

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

(22) The council shall adopt and promulgate rules and regulations no more stringent than the provisions of section 1453 et seq. of the federal Safe Drinking Water Act for public water 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.

Source: Laws 1971, LB 939, § 5; Laws 1972, LB 1435, § 4;
Laws 1973, LB 538, § 2; Laws 1974, LB 1029, § 3;
Laws 1979, LB 342, § 2; Laws 1980, LB 853, § 3;
Laws 1981, LB 216, § 3; Laws 1983, LB 356, §? 5;
Laws 1984, LB 1078, § 3; Laws 1986, LB 1008, § 2;
Laws 1992, LB 1257, § 79; Laws 1993, LB 623, § 3;
Laws 1994, LB 570, § 7; Laws 1994, LB 1031, § 1;
Laws 1997, LB 517, § 25; Laws 1998, LB 1209, § 21;
Laws 1999, LB 784, § 1; Laws 2001, LB 126, § 1;
Laws 2001, LB 667, § 49; Laws 2004, LB 449, § 1;
Laws 2006, LB 872, § 3.

81-1505.01. Department of Environmental Quality Cash Fund; created; use; investment. There is hereby created the Department of Environmental Quality Cash

Fund which shall be used to pay the expenses of the department. The department shall remit all fees collected pursuant to subsection (9) of section 81-1505 and section 81-1521.09 to the State Treasurer for credit to the fund. Any fee collected pursuant to section 81-1521.09 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 the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1983, LB 356, § 8; Laws 1987, LB 114, § 1;
Laws 1992, LB 1257, § 80; Laws 1993, LB 3, § 48;
Laws 1994, LB 1066, § 112; Laws 1995, LB 429, § 2.

81-1505.02. Mineral exploration holes; rules and regulations. The council may adopt and promulgate rules and regulations governing mineral exploration holes prior to August 1, 1983, but such rules and regulations shall not be effective until such date.

The council shall adopt and promulgate rules and regulations authorized by the amendments made by Laws 1983, LB 356, to subsection (9) of section 81-1505 within one hundred twenty days of May 26, 1983. All requirements of the Environmental Protection Act shall apply to any permit application regardless of the date of submission, except that the department shall continue to diligently process any application submitted prior to May 26, 1983.

Source: Laws 1983, LB 356, § 9.

81-1505.03. Small Business Compliance Advisory Panel; created; members; duties; expenses. (1) There is hereby created the Small Business Compliance Advisory Panel. The panel shall consist of the following:

(a) Two members who are not owners or representatives of owners of small business stationary sources of air emissions selected by the Governor to represent the general public;

(b) Four members selected by the Legislature who are owners or who represent owners of small business stationary sources of air emissions; and

(c) One member selected by the director.

(2) The panel shall be responsible for all requirements of the Clean Air Act, 42 U.S.C. 7401 et seq., as such act existed on January 1, 2004. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The panel shall conduct its meetings in accordance with the Open Meetings Act and shall submit an annual report to the Governor no later than January 1 of each year. The panel shall receive necessary staff support from the department.

Source: Laws 1992, LB 1257, § 81; Laws 2004, LB 821, § 31.

81-1505.04. Annual emission fee; payment; amount; adjustment; allocation of costs; department; duties; report. (1)(a) The department shall collect an annual emission fee from major sources of air pollution. Each major source shall pay the emission fee for regulated pollutants in the amount of twenty-five dollars per ton per pollutant or as adjusted pursuant to this section. The fee shall be based upon the amount of emissions of each regulated pollutant as reported or estimated by the source in the

previous calendar year, but fees shall not be paid on amounts in excess of four thousand tons per year for any regulated pollutant.

(b) Beginning with calendar year 2001 emissions, fees shall not be paid for a mid-sized electric generation facility on amounts in excess of four hundred tons per year for any regulated pollutant.

(c) For purposes of this section, mid-sized electric generation facility means a facility that:

(i) Uses coal as the primary source of fuel in the facility's largest generation unit;

(ii) Has a name plate generating capacity of between seventy and one hundred fifteen megawatts in the facility's largest generation unit; and

(iii) Is not operating in a political subdivision which has been delegated the authority to enforce the air quality permit program within its jurisdiction.

(2)(a) The emission fee may be increased or decreased annually by the department by the percentage difference between the Consumer Price Index for the most recent year ending before the beginning of such year and the Consumer Price Index for the year 1989 or as required to pay all reasonable direct and indirect costs of developing and administering the air quality permit program. For purposes of this section, Consumer Price Index means the change in the price of goods and services for all urban consumers published by the United States Department of Labor at the close of the twelve-month period ending on August 31 of each year.

(b) For purposes of this section, reasonable direct and indirect costs of developing and administering the air quality permit program, as required under the federal Clean Air Act, as the act existed on May 31, 2001, 42 U.S.C. 7661a through f, include:

(i) Consideration of any associated overhead charges for personnel, equipment, buildings, and vehicles;

(ii) Reviewing and acting on any application for a permit or permit revision;

(iii) Implementing and enforcing the terms of any permit, not including any court costs or other costs associated with any formal enforcement action;

(iv) Emissions and ambient monitoring, including adequate resources to audit and inspect source-operated monitoring programs;

(v) Preparing generally applicable regulations or guidance;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions;

(viii) Developing and implementing any emissions trading programs as defined by the department; and

(ix) Providing support to sources under the Small Business Compliance Advisory Panel.

(c) The council shall establish procedures for the method of calculation and payment of the emission fee in a manner consistent with this section and shall establish the definition of or a table listing the pollutants which are regulated pollutants and a definition of major source. Such definitions or listing shall comply with and not be more stringent than the requirements of the federal Clean Air Act, as the act existed on May 31, 2001, 42 U.S.C. 7401 et seq.

(3) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect program costs incurred in the previous fiscal year in carrying out the air quality permit program. The

Appropriations Committee of the Legislature shall review such report in its analysis of executive programs in order to verify that revenue generated from emission fees was used solely to offset appropriate and reasonable costs associated with the air quality permit program. The report shall identify costs incurred by the department to administer the permit program for each major source. In addition, the department shall identify costs incurred by primary activity not specific to a major source.

(4) The department shall administer a cost tracking system which shall show costs for each major source and costs for each primary activity that is not specific to a major source. The department shall consult with interested parties regarding identification of primary activities to be tracked by the cost tracking system.

Source: Laws 1992, LB 1257, § 82; Laws 1996, LB 634, § 1; Laws 2001, LB 461, § 7; Laws 2005, LB 94, § 1; Laws 2006, LB 872, § 4.

81-1505.05. Clean Air Title V Cash Fund; created; use; investment. The Clean Air Title V Cash Fund is created. The department shall remit all fees collected pursuant to section 81-1505.04 to the State Treasurer for credit to the fund. Any fee collected pursuant to section 81-1505.04 shall be used solely to pay the reasonable direct and indirect costs required to develop and administer the air quality permit program, including expenses of the Small Business Compliance Advisory Panel. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1995, LB 429, § 1.

81-1505.06. Air quality construction permit; fees; Air Quality Permit Cash Fund; created; use; investment. (1) Beginning January 1, 2005, each application for an air quality construction permit required by rules and regulations adopted pursuant to subsection (12) of section 81-1505 shall be accompanied by an application fee. If fees are required under more than one subdivision of this subsection, the application shall be accompanied by the one fee which is the highest of the applicable fees. The application fee shall be based on potential to emit, as defined in such rules and regulations, in accordance with the following schedule:

(a) Three thousand dollars for facilities that directly emit or have the potential to emit one hundred tons per year or more of any air pollutant, except hazardous air pollutants;

(b) Three thousand dollars for facilities that directly emit or have the potential to emit ten tons per year or more of any single hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants;

(c) One thousand five hundred dollars for facilities that directly emit or have the potential to emit fifty tons per year or more but less than one hundred tons per year of any air pollutant, except hazardous air pollutants;

(d) One thousand five hundred dollars for facilities that directly emit or have the potential to emit (i) two and one-half tons per year or more but less than ten tons per year of any single hazardous air pollutant or (ii) ten tons per year or more but less than twenty-five tons per year of any combination of hazardous air pollutants;

(e) Two hundred fifty dollars for facilities that directly emit or have the potential to emit less than fifty tons per year of any air pollutant, except hazardous air pollutants; and

(f) Two hundred fifty dollars for facilities that directly emit or have the potential to emit (i) less than two and one-half tons per year of any single hazardous air pollutant and (ii) less than ten tons per year of any combination of hazardous air pollutants.

(2) All application fees collected under this section shall be remitted to the State Treasurer for credit to the Air Quality Permit Cash Fund, which fund is hereby created. The Air Quality Permit Cash Fund shall be used for purposes identified in subsection (12) of section 81-1505. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) For purposes of this section, (a) air pollutant means particulate matter with a diameter of ten microns or less, sulfur dioxide or sulfur trioxide or any combination of the two, oxides of nitrogen, volatile organic compounds, and carbon monoxide and (b) hazardous air pollutant means any pollutant defined as such in rules and regulations adopted pursuant to subsection (12) of section 81-1505.

Source: Laws 2004, LB 449, § 2.

81-1506. Unlawful acts. (1) It shall be unlawful for any person:

(a) To cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state; or

(b) To discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance. An animal feeding operation is not a nuisance if:

(i) Reasonable techniques are employed to keep dust, noise, insects, and odor at a minimum;

(ii) It is in compliance with applicable regulations adopted by the council and zoning regulations of the local governing body having jurisdiction; and

(iii) The action is brought by or on behalf of a person whose date of lawful possession of the land claimed to be affected by an animal feeding operation is subsequent to the issuance of an appropriate permit by the department for such operation or is subsequent to the operation of the feedlot and an onsite inspection by the department is made, before or after filing of the suit, and the inspection reveals that no permit is required for such operation.

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

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

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

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

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

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

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

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

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

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

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

(4) It shall be unlawful to:

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

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

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

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

(a) Construct or operate an animal feeding operation without first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts;

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

(c) Violate any term or condition of an animal feeding operation permit; or

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

(6) Nothing in this section shall be construed to authorize the department to specify the type, design, method of installation, or type of construction of any equipment of manufacturing processes.

Source: Laws 1971, LB 939, § 6; Laws 1972, LB 1435, § 5;
Laws 1974, LB 1029, § 4; Laws 1977, LB 132, § 1;
Laws 1980, LB 915, § 1; Laws 1983, LB 356, § 6;
Laws 1992, LB 1257, § 83; Laws 1993, LB 623, § 4;
Laws 1994, LB 570, § 8; Laws 1998, LB 1209, § 22;
Laws 2004, LB 916, § 26.

81-1507. Director; violations; hearings; orders. (1) Whenever the director has reason to believe that a violation of any provision of the Environmental Protection Act, the

Integrated Solid Waste Management Act, the Livestock Waste Management Act, a rule or regulation pursuant to such acts, or any order of the department has occurred, he or she may cause a written complaint to be served upon the alleged violator or violators or he or she may bring a criminal or civil action under section 81-1508.01 or 81-1508.02. The complaint shall specify the provision of the act, rule or regulation, or order alleged to be violated and the facts alleged to constitute a violation thereof and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named therein requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (5) of this section not less than thirty days before the time set for the hearing. Whenever, on the basis of any information, the director determines that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility authorized to operate under the Environmental Protection Act or from a facility subject to hazardous waste management regulations adopted and promulgated under the act, the director may issue an order requiring the owner or operator to monitor, investigate, and undertake corrective action or such other response at the facility or beyond the facility boundary where necessary to protect human health and the environment. In the case of any facility or site not in operation at the time a determination is made to require corrective action, if the director finds that the owner could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the site, the director may issue an order requiring any previous owner or operator who could reasonably be expected to have actual knowledge to carry out the necessary monitoring, investigation, and corrective action.

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

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

revocation, or modification. On the basis of such hearing the director shall affirm, modify, or revoke his or her previous determination.

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

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

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

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

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

Source: Laws 1971, LB 939, § 7; Laws 1972, LB 1435, § 6;
Laws 1974, LB 1029, § 5; Laws 1981, LB 204, § 197;
Laws 1983, LB 447, § 99; Laws 1987, LB 152, § 2;
Laws 1992, LB 1257, § 84; Laws 1998, LB 1209, § 23;
Laws 1999, LB 784, § 2; Laws 1999, LB 789, § 1.

81-1508. Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; civil penalties; injunctions. (1) Any person who violates any of the provisions of the Environmental Protection Act,

the Integrated Solid Waste Management Act, or the Livestock Waste Management Act, fails to perform any duty imposed by either act or any rule or regulation issued thereunder, or violates any order or determination of the director promulgated pursuant to either act and causes the death of fish or other wildlife shall, in addition to the penalties provided in sections 81-1508.01 and 81-1508.02, be liable to pay to the state an additional amount equal to the sum of money reasonably necessary to restock waters with fish or replenish such wildlife as determined by the director after consultation with the Game and Parks Commission. Such amount may be recovered by the director on behalf of the state in a civil action brought in the district court of the county in which such violation or failure to perform the duty imposed occurred.

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

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

Source: Laws 1971, LB 939, § 8; Laws 1972, LB 1435, § 7;
Laws 1973, LB 538, § 3; Laws 1979, LB 342, § 3;
Laws 1981, LB 216, § 4; Laws 1983, LB 356, § 7;
Laws 1984, LB 1078, § 4; Laws 1987, LB 565, § 1;
Laws 1991, LB 413, § 1; Laws 1992, LB 1257, § 85;
Laws 1994, LB 570, § 9; Laws 1998, LB 1209, § 24.

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

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

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

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

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

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

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

(g) Transporting hazardous waste to an unpermitted facility.

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

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

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

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

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

Source: Laws 1994, LB 570, § 10; Laws 1998, LB 1209, § 25.

81-1508.02. Unlawful acts; civil penalty. (1) It shall be unlawful for any person:

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

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

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

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

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

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

Source: Laws 1994, LB 570, § 11; Laws 1998, LB 1209, § 26;
Laws 1999, LB 789, § 2.

81-1509. Appeal; procedure. An appeal may be taken from any final decision of the director, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1971, LB 939, § 9; Laws 1972, LB 1435, § 8;
Laws 1974, LB 1029, § 6; Laws 1979, LB 321, § 3;
Laws 1988, LB 352, § 174.

81-1510. Director; voluntary compliance; records. (1) The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

(2) The director may require the maintenance of records relating to the operation of disposal systems, and any authorized representative of the director may examine and copy any such records or memoranda pertaining to the operation of disposal systems. Copies of such records shall be submitted to the director upon request.

Source: Laws 1971, LB 939, § 10; Laws 1972, LB 1435, § 9;
Laws 1992, LB 1257, § 86.

81-1511. Department; inspections; search warrants. Any duly authorized officer, employee, or representative of the director may at any reasonable time, with the consent of the person or persons in control of an air, land, or water contaminant source, enter and inspect any property, premise, or place on or at which such a contaminant source is located or being constructed, installed, or established for the purpose of ascertaining the state of compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act and rules and regulations in force pursuant to the acts. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by the district court as provided by law to such officer, employee, or representative of the department for the purpose of enabling him or her to make such inspection. No person shall refuse entry or access to any authorized representative of the department who

requests entry for purposes of inspection and who presents appropriate credentials and warrants. No person shall obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in acute and compelling emergency situations when there is neither sufficient time nor opportunity to obtain a search warrant. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

Source: Laws 1971, LB 939, § 11; Laws 1972, LB 1435, § 10; Laws 1987, LB 152, § 3; Laws 1992, LB 1257, § 87; Laws 1998, LB 1209, § 27.

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

Source: Laws 1971, LB 939, § 12; Laws 1987, LB 152, § 4; Laws 1992, LB 1257, § 88; Laws 1998, LB 1209, § 28.

81-1513. Variances from rules or regulations; notice; conditions for granting; appeal. (1) Any person who owns or is in control of any plant, building structure, process, or equipment may apply to the director for a variance from rules or regulations. The director may grant such variance if he or she finds that the emissions or discharges occurring or proposed to occur do not endanger or tend to endanger human health or safety or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. In making such findings the director shall give due consideration to all the facts and circumstances bearing upon the reasonableness of the emissions or discharges involved including, but not limited to:

(a) The character and degree of injury to or interference with the health and physical property of the people;

(b) The social and economic value of the source of the air, water, or land pollution;

(c) The question of priority of location in the area involved; and

(d) The technical practicability and economic reasonableness of reducing or eliminating the emissions or discharges resulting from such source.

(2) No variance shall be granted until the director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. Before any variance is granted, the director shall give public notice of an application for such variance immediately upon receipt of such application and in accordance with the rules and regulations of the department. The notice shall be published in a newspaper of general circulation in the county in which the plant, building structure, process, or equipment on which the proposed variance is located.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section, for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the air, water, or land pollution involved, it shall be only until the necessary means for prevention, abatement, or control become known and available and subject to the taking of any substitute or alternate measures that the director may prescribe;

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the director, is requisite for the taking of the necessary measures. A variance granted on the ground specified in this section shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable; and

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivision (a) or (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the director on account of the variance, no renewal thereof shall be granted unless the director finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal and before approving the renewal application, the director shall give public notice of such application in accordance with rules and regulations of the department. The public notice shall be published in the county in a newspaper of general circulation in which the plant, building structure, process, or equipment on which the variance is located.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the director. The granting or denial of a variance or a renewal shall be by final order of the director. Any person adversely affected by such an order may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of section 81-1507 to any person or his or her property.

(7) No variance shall be granted which will sanction any violation of state or federal statutes or regulations.

Source: Laws 1971, LB 939, § 13; Laws 1972, LB 1435, § 11;
Laws 1974, LB 1029, § 7; Laws 1988, LB 352, § 175;
Laws 2006, LB 975, § 19.

81-1514. Land resources; public policy. It is hereby declared to be the public policy of the State of Nebraska to achieve and maintain such a reasonable degree of purity of the land resources of the state as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state, protect the scenic beauty of the state, facilitate the enjoyment

of the natural attractions of the state, and to provide for the prevention, abatement and control of new or existing land pollution.

Source: Laws 1971, LB 939, § 14.

81-1516. Refuse, garbage, and rubbish; disposal; conditions. No person shall dispose of any refuse, garbage, or rubbish at any place except a disposal area for which a permit has been issued as provided by the Environmental Protection Act or, on and after October 1, 1993, in a facility for which a permit has been issued under the Integrated Solid Waste Management Act. Nothing in either act and no act of the director shall usurp the legal right of a local governing body to develop and enforce local ordinances, codes, or rules and regulations on solid waste disposal equal to or more stringent than the provisions of the acts as necessary to protect the public health and welfare and the environment, and the provisions of the acts shall not relieve the applicant from obtaining a permit from a local governing body when required or relieve the person owning or operating a disposal area from responsibility for securing proper zoning permits or complying with all applicable local ordinances, codes, or rules and regulations not in conflict with the provisions of the acts.

Source: Laws 1971, LB 939, § 16; Laws 1987, LB 152, § 5; Laws 1992, LB 1257, § 89.

81-1521.08. Hazardous waste; terms, defined. For purposes of sections 81-1521.08 to 81-1521.23, 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 81-1521.09;

(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.

Source: Laws 1987, LB 114, § 2.

81-1521.09. Hazardous waste; commercial hazardous waste management facility; notice of intent to apply for permit; fee; site review committee; director; appoint designee. (1) Commencing on June 30, 1988, 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 81-1521.12. 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 81-1521.19. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1987, LB 114, § 3; Laws 1997, LB 752, § 225.

81-1521.10. Hazardous waste; site review committee; membership. (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.

Source: Laws 1987, LB 114, § 4.

81-1521.11. Hazardous waste; site review committee; meetings; officers; professional facilitator. 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.

Source: Laws 1987, LB 114, § 5.

81-1521.12. Hazardous waste; department; provide staff; applicant; pay expenses. 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 81-1176 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.

Source: Laws 1987, LB 114, § 6.

81-1521.13. Hazardous waste; site review committee; consider factors; enumerated. 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, monitor plans, who is responsible for enforcement, sequence and timing of possible enforcement, and the ability of governmental agencies to ensure compliance.

Source: Laws 1987, LB 114, § 7.

81-1521.14. Hazardous waste; site review committee; issue report; contents. 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.

Source: Laws 1987, LB 114, § 8.

81-1521.15. Commercial hazardous waste management facility; application for permit. 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. The application shall contain the name and residence of the applicant, the location of the proposed 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.

Source: Laws 1980, LB 853, § 8; R.S.1943, (1981), § 81-1521.01; Laws 1987, LB 114, § 9.

81-1521.16. Commercial hazardous waste management facility; application; hearing by local governing body. 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.

Source: Laws 1987, LB 114, § 10.

81-1521.17. Commercial hazardous waste management facility; notice of hearing; decision by local governing body. Before the county board, city council, or board of trustees approves 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 facility is to be located and shall state the time and place of hearing, the name of the applicant for a permit, and the exact location of the proposed facility. In deciding whether to approve or disapprove such facility, the county board, city council, or board of trustees shall

determine if such facility will be in compliance with its zoning laws or violate any local ordinances or resolutions. The local governing body shall 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.

Source: Laws 1980, LB 853, § 9; R.S.1943, (1981), § 81-1521.02; Laws 1987, LB 114, § 11; Laws 1987, LB 152, § 8.

81-1521.18. Commercial hazardous waste management facility; appeal of decision. 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.

Source: Laws 1987, LB 114, § 12.

81-1521.19. Commercial hazardous waste management facility; approval; director; duties. 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.

Source: Laws 1987, LB 114, § 13.

81-1521.20. Commercial hazardous waste management facility; publication of notice; additional hearing; permit; issuance; conditions. 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 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 permit if he or she determines that the circumstances justify it.

Prior to issuing the permit, the director shall find that the applicant is a responsible and suitable person to conduct the business and that the proposed facility complies with the provisions specified in section 81-1521.19 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.

Source: Laws 1980, LB 853, § 10; R.S.1943, (1981), § 81-1521.03; Laws 1987, LB 114, § 14.

81-1521.21. Commercial hazardous waste management facility; permittee; financial responsibility and insurance. As a condition of granting a permit for any commercial hazardous waste management facility, the permittee 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.

Source: Laws 1980, LB 853, § 11; Laws 1984, LB 1078, § 6; R.S.Supp.,1986, § 81-1521.04; Laws 1987, LB 114, § 15.

81-1521.22. Commercial hazardous waste management facility permit; expiration; renewal. Permits shall expire five years following the date of issuance but may be renewed if the permittee has complied with the provisions of the Environmental Protection Act and the rules and regulations adopted and promulgated thereunder.

Source: Laws 1980, LB 853, § 12; R.S.1943, (1981), § 81-1521.05; Laws 1987, LB 114, § 16; Laws 1987, LB 152, § 9.

81-1521.23. Commercial hazardous waste management facility permit; revocation; when. The director may revoke the permit for a commercial hazardous waste management facility, pursuant to subsection (3) of section 81-1507, if he or she finds that the facility is not being operated in accordance with the Environmental Protection Act and rules and regulations adopted and promulgated thereunder.

Source: Laws 1980, LB 853, § 13; R.S.1943, (1981), § 81-1521.06; Laws 1987, LB 114, § 17; Laws 1987, LB 152, § 10.

81-1523. Accumulation of junk; unlawful. It shall be unlawful for any property owner or person in lawful possession of property to allow the accumulation of junk on property that is not purely agricultural in character to the extent that such accumulation is a potential hazard to health.

Source: Laws 1971, LB 939, § 23.

81-1524. Accumulation of junk; investigation; removal; notice. The department of health of a city, or the director, as the case may be, shall have the power to investigate all complaints of violations of section 81-1523 and, if either the department or director finds that the property owner or person in lawful possession of the property has allowed an unlawful accumulation of junk, shall give notice to the owner or person in

lawful possession of the property by certified or registered mail to remove the accumulation within thirty days.

Source: Laws 1971, LB 939, § 24.

81-1525. Accumulation of junk; failure to remove; violation; penalty. Any property owner or person in lawful possession of property who fails or refuses to remove an accumulation of junk as directed by the director pursuant to section 81-1524 shall be guilty of a Class V misdemeanor.

Source: Laws 1971, LB 939, § 25; Laws 1972, LB 1435, § 13; Laws 1977, LB 39, § 305.

81-1526. Rules and regulations; provisions applicable; exceptions. (1) All rules and regulations adopted by the council and all hearings and other proceedings of the director, and judicial review thereof, shall be subject to the provisions of the Administrative Procedure Act.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section 81-1507.

(3) Nothing in the Administrative Procedure Act shall be construed to render inapplicable or unenforceable the procedure set forth in section 81-1507. In any case of inconsistency or conflict, the provisions of section 81-1507 shall prevail.

Source: Laws 1971, LB 939, § 26; Laws 1974, LB 1029, § 8.

81-1527. Records and information; confidential use. (1) Any records or other information furnished to or obtained by the department concerning one or more air, water, or land contaminant sources, which records or information, as certified by the owner or operator and determined by the director to relate to methods or processes entitled to protection as trade secrets of such owner or operator, shall be only for the confidential use of the department in the administration of the Environmental Protection Act and the Integrated Solid Waste Management Act unless such owner or operator expressly agrees to their publication or availability to the general public, except that emission data obtained under the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., or effluent data, permit applications, draft permits, or permits as issued, all under the National Pollutant Discharge Elimination System, pursuant to the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended, shall be available to the public during business hours. Any information to be accorded confidential status in a national pollutant discharge elimination system form shall be forwarded to the Regional Administrator of the Environmental Protection Agency for concurrence with the director's determination of such status. Nothing in this section shall be construed to prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of water or the land or the outdoor atmosphere as long as such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

(2) The director shall permit the Administrator or Regional Administrator of the Environmental Protection Agency or his or her delegates to inspect the confidential

records of the department concerning a given source.

Source: Laws 1971, LB 939, § 27; Laws 1972, LB 1435, § 14; Laws 1974, LB 1029, § 9; Laws 1984, LB 1078, § 7; Laws 1992, LB 1257, § 90.

81-1528. Act; political subdivision exempt; when; council; rules and regulations. (1) The Environmental Protection Act shall not apply in any political subdivision which provides for the control of air, water, or land pollution by resolution, ordinance, or regulation not inconsistent with the substantive provisions of the Environmental Protection Act or any rule or regulation adopted pursuant to such act, except that no such resolution, ordinance, or regulation shall become effective until a certificate of exemption has been issued by the director. Such certificate of exemption shall be available for inspection in the office of the county, city, or village clerk as the case may be.

(2) If the director determines at any time after the issuance of such a certificate that a resolution, ordinance, or regulation is being enforced in a manner inconsistent with the Environmental Protection Act or any rule or regulation adopted pursuant to such act in any political subdivision holding a certificate of exemption, the director may suspend the certificate of exemption and the Environmental Protection Act shall apply in such political subdivision until such standards are met and a new certificate is issued.

(3) Any political subdivision desiring a certificate of exemption shall make application for such certificate by filing a petition for certificate of exemption with the director. The director or his or her designated representative shall promptly investigate such petition. If the recommendation of the director or his or her designated representative is against the granting of a certificate of exemption and he or she, in his or her discretion, concludes that a hearing would be advisable, a hearing shall be held as provided in section 81-1507 on the questions of whether the resolution, ordinance, or regulation is consistent with the substantive provisions of the Environmental Protection Act or any rule or regulation adopted pursuant to such act and whether adequate provisions have been made for enforcement. The burden of proof shall be upon the political subdivision. A like hearing shall be held upon any proposed suspension of a certificate of exemption.

(4) If the director finds that the location, character, or extent of particular concentrations of population, air, water, or land contaminant sources, the geographic, topographic, or meteorological considerations, or any combination thereof are such as to make impracticable the maintenance of appropriate levels of air, water, or land quality without an areawide air, water, or land pollution control program, the director may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(5) Nothing in the Environmental Protection Act shall be construed to supersede or oust the jurisdiction of any local air, water, or land pollution control program in operation on May 26, 1971. Such program shall meet all requirements of the Environmental Protection Act for a local air, water, or land pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

(6) Until October 1, 1993, cities of the second class and villages shall be exempt from the provisions of the Environmental Protection Act and the Integrated Solid Waste Management Act pertaining to permits for and control of nonhazardous solid waste disposal systems if such cities and villages provide solid waste disposal systems which do not result in the pollution of waters of the state. The department shall act in an advisory capacity to such cities and villages and shall have the right to inspect solid waste disposal sites and evaluate them according to the site evaluation criteria promulgated pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. The department shall notify the community of the results of its evaluation.

(7) The council shall, by July 1, 1992, adopt and promulgate rules and regulations which provide standards for the closure and postclosure care of all landfills, including landfills previously exempted under this section.

Source: Laws 1971, LB 939, § 28; Laws 1972, LB 1435, § 15; Laws 1980, LB 853, § 7; Laws 1984, LB 1078, § 8; Laws 1991, LB 67, § 2; Laws 1992, LB 1257, § 91.

81-1529. Act, how construed. Nothing in the Environmental Protection Act shall be construed to:

(1) Grant to the department any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops or private property appurtenant thereto;

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution; or

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

Source: Laws 1971, LB 939, § 29; Laws 1987, LB 152, § 11.

81-1531.01. Act, how construed. Nothing in the Environmental Protection Act shall be construed to apply to any wells or holes covered by sections 57-901 to 57-922.

Source: Laws 1983, LB 356, § 10.

81-1531.02. Uranium mining; department; regulatory duties; prohibited methods; enforcement. (1) The department shall recommend an appropriate regulatory policy for controlling uranium mining to be presented to the council and the Legislature by January 1, 1986. The department shall evaluate all reasonable regulatory options for addressing the impacts on air, land, and water quality of uranium mining by methods other than mineral production and injection wells which are presently regulated. The department shall examine and consider regulatory programs created by other states and the federal government, their applicability to Nebraska, and their success in the states or areas where they are used and shall consider, but not be limited to, the following policy options:

(a) The development of uranium surface and shaft mining regulations;

(b) The development of regulations addressing appropriate development, mitigation, or reclamation standards for uranium mining or uranium mining-related activities;

(c) The appropriateness of developing regulations addressing ground or surface water use standards for uranium mining or uranium mining-related activities as a means of limiting the impact of uranium mining on land and water resources; and

(d) The use of any other existing state regulatory programs to control or regulate the impacts of uranium mining on land and water resources.

(2) The department shall perform the evaluation in cooperation with other state agencies which have or could have a role in regulating the impacts of uranium mining on Nebraska's people and resources or in controlling other uranium mining activities. The department shall also create a citizen advisory panel, of interested or affected parties, which shall be consulted for its input and opinion on the results of the evaluation of regulatory options.

(3) Uranium mining by any method other than mineral production and injection wells shall be prohibited until legislation is passed authorizing the department to regulate such mining activities. It is the intent of the Legislature that uranium mining shall be regulated by the department. Upon receipt of evidence that uranium mining by any method other than by mineral production and injection wells or related activities are presenting or are likely to present an imminent and substantial threat to the environment, the director shall petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts or to require any person to stop such acts or to take such other action as may be necessary. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with this section.

Source: Laws 1983, LB 356, § 11; Laws 1984, LB 742, § 2;
Laws 1986, LB 1008, § 3.

81-1532. Act, how cited. Sections 81-1501 to 81-1532 shall be known and may be cited as the Environmental Protection Act.

Source: Laws 1971, LB 939, § 32; Laws 1983, LB 356, § 12;
Laws 1987, LB 114, § 18; Laws 1991, LB 528, § 2;
Laws 1992, LB 1257, § 92; Laws 1994, LB 570, § 12;
Laws 1998, LB 1209, § 30; Laws 2000, LB 1234, § 13;
Laws 2001, LB 461, § 8; Laws 2004, LB 449, § 3.

NEBRASKA LITTER REDUCTION AND RECYCLING ACT

81-1534. Act, how cited. Sections 81-1534 to 81-1566 shall be known and may be cited as the Nebraska Litter Reduction and Recycling Act.

Source: Laws 1979, LB 120, § 1; Laws 1993, LB 203, § 2.
Termination date October 30, 2010.

81-1535. Legislative declaration; litter and recycling program. The Legislature declares that the protection of the public health, safety, and well-being, the maintenance of the economic productivity and environmental quality of the state, and the conservation of natural resources require the implementation of a comprehensive litter and recycling

program throughout the state and the rapid development of technologically and economically feasible operational projects for the recovery of energy and resources.

Source: Laws 1979, LB 120, § 2.
Termination date October 30, 2010.

81-1536. Definitions, where found. For purposes of the Nebraska Litter Reduction and Recycling Act, unless the context otherwise requires, the definitions found in sections 81-1537 to 81-1548.04 shall be used.

Source: Laws 1979, LB 120, § 3; Laws 1981, LB 253, § 2;
Laws 1993, LB 203, § 3.
Termination date October 30, 2010.

81-1537. Department, defined. Department shall mean the Department of Environmental Quality.

Source: Laws 1979, LB 120, § 4; Laws 1993, LB 3, § 50.
Termination date October 30, 2010.

81-1538. Council, defined. Council shall mean the Environmental Quality Council.

Source: Laws 1979, LB 120, § 5; Laws 1993, LB 3, § 51.
Termination date October 30, 2010.

81-1539. Fund, defined. Fund shall mean the Nebraska Litter Reduction and Recycling Fund.

Source: Laws 1979, LB 120, § 6.
Termination date October 30, 2010.

81-1540. Director, defined. Director shall mean the Director of Environmental Quality.

Source: Laws 1979, LB 120, § 7; Laws 1993, LB 3, § 52.
Termination date October 30, 2010.

81-1541. Litter, defined. Litter shall mean all waste material susceptible to being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but not including the wastes of primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

Source: Laws 1979, LB 120, § 8; Laws 1981, LB 253, § 3.
Termination date October 30, 2007.

81-1542. Manufacturer, defined. Manufacturer shall mean any person engaged in a business activity who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from the sale of tangible personal property which the person

has made, produced, manufactured, processed, or fabricated which is within any of the categories listed in section 81-1560.

Source: Laws 1979, LB 120, § 9; Laws 1981, LB 253, § 4; Laws 1993, LB 203, § 4.
Termination date October 30, 2007.

81-1543. Person, defined. Person shall mean any natural person, political subdivision, government agency, public or private corporation, partnership, limited liability company, joint venture, association, firm, or individual proprietorship.

Source: Laws 1979, LB 120, § 10; Laws 1993, LB 121, § 539.
Termination date October 30, 2007.

81-1544. Public place, defined. Public place shall mean any place or area in the state that is used or held out for use by the public, whether owned or operated by public or private interests.

Source: Laws 1979, LB 120, § 11.
Termination date October 30, 2010.

81-1545. Recycling, defined. Recycling shall mean the process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering and reusing the resources contained therein.

Source: Laws 1979, LB 120, § 12.
Termination date October 30, 2010.

81-1546. Recycling center, defined. Recycling center shall mean a central collection point in a community for recyclable materials.

Source: Laws 1979, LB 120, § 13.
Termination date October 30, 2010.

81-1547. Resource recovery, defined. Resource recovery shall mean a system or process for the recovery of materials or energy from waste material.

Source: Laws 1979, LB 120, § 14.
Termination date October 30, 2010.

81-1548. Source separation, defined. Source separation shall mean separation by the public from their general refuse of recyclable material.

Source: Laws 1979, LB 120, § 15.
Termination date October 30, 2010.

81-1548.01. Wholesaler, defined. Wholesaler shall mean any person engaged in business who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from sales at the wholesale level to retailers, other merchants, or industrial, institutional, and commercial users of any tangible personal property falling into any of the categories listed in section 81-1560 which is sold at the wholesale level.

Source: Laws 1981, LB 253, § 5; Laws 1993, LB 203, § 5.
Termination date October 30, 2010.

81-1548.02. Retailer shall mean any person engaged in business who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from the sales of tangible personal property for storage, use, or other consumption or from the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption of any of the products, including byproducts, falling into the categories listed in section 81-1560.02.

Source: Laws 1981, LB 253, § 6; Laws 1993, LB 203, § 6.

Termination date October 30, 2010.

81-1548.03. Tangible personal property, defined. Tangible personal property shall mean all tangible personal property except:

(1) Gas, electricity, and water delivered through mains, lines, pipes, or channels to purchasers;

(2) Food and food products for human or pet consumption sold in bulk form and not packaged or subpackaged in individual containers, packages, or units, or a type of size not suitable for sale to consumers purchasing in the ordinary course of retail marketing; and

(3) Fertilizer, seeds, annual plants, any form of animal life, and animal feed sold for resale or use in the agricultural food industry.

Source: Laws 1981, LB 253, § 7.

Termination date October 30, 2010.

81-1548.04. Gross proceeds, defined. Gross proceeds shall mean the total receipts from all sales less expenditures for the purchase of any item in this state for the purpose of recycling such item.

Source: Laws 1981, LB 253, § 8.

Termination date October 30, 2010.

81-1549. Council; adopt rules and regulations. In addition to other powers and duties, the council shall have the power to propose and to adopt and promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of the Nebraska Litter Reduction and Recycling Act.

Source: Laws 1979, LB 120, § 16; Laws 1981, LB 253, § 9;
Laws 1993, LB 203, § 7.

Termination date October 30, 2010.

81-1550. Litter prone activities and areas; litter receptacles; required. Litter prone activities and areas shall be required to have appropriate litter receptacles meeting minimum standards established by the department. The council shall, by regulation, determine what are litter prone activities and areas.

Source: Laws 1979, LB 120, § 17.

Termination date October 30, 2010.

81-1551. Litter receptacles; owner or operator provide and maintain; penalty. It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by section 81-1550 to procure and

place such receptacles at his or her own expense on the premises and to maintain the same in accord with rules and regulations adopted by the council. Any person who fails to place such litter receptacles on the premises in the numbers required or to maintain such receptacles in the manner required shall be guilty of a Class V misdemeanor.

Source: Laws 1979, LB 120, § 18; Laws 1981, LB 253, § 10.
Termination date October 30, 2010.

81-1552. Litter receptacle; abuse; misuse; prohibited; violation; penalty. (1) No person shall damage, deface, abuse, or misuse any litter receptacle not owned by him or her so as to interfere with its proper function or to detract from its proper appearance.

(2) No person shall deposit leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with the permission of the owner of such receptacle.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1979, LB 120, § 19; Laws 1981, LB 253, § 11.
Termination date October 30, 2010.

81-1553. Litter problem; surveys; department; grant funds; annual progress report. (1) In order to identify the litter problem more fully and to measure the progress made by the department, within twelve months of October 1, 1979, the department shall conduct, or grant funds to enable public or private agencies to conduct, a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas in the state. The department shall conduct, or grant funds to enable public or private agencies to conduct, followup surveys on a sufficiently regular basis to provide meaningful measurement of the amount and composition of litter and the rate of littering. The results of these surveys shall be reported to the Governor. The department shall not spend more than fifty thousand dollars from the fund to conduct the original survey required by this section.

(2) The department shall submit, by February 15 of each year, an annual progress report for the previous year relating to the purpose of the Nebraska Litter Reduction and Recycling Act to the Governor and the Appropriations Committee of the Legislature.

Source: Laws 1979, LB 120, § 20; Laws 1981, LB 253, § 12;
Laws 1984, LB 670, § 1; Laws 1993, LB 203, § 8.
Termination date October 30, 2010.

81-1554. Department; jobs for unemployed; design programs; grant funds. In order to provide employment and to establish litter free areas, the department may design programs and grant funds for the use of unemployed persons on a seasonal and part-time basis. In designing such programs, the department shall cooperate and coordinate with federal, other governmental, and private programs aimed at providing jobs for the unemployed.

Source: Laws 1979, LB 120, § 21.
Termination date October 30, 2010.

81-1555. Department; encourage effective local littering laws. The department shall work toward establishing effective local ordinances and resolutions relating to littering laws.

Source: Laws 1979, LB 120, § 22.
Termination date October 30, 2010.

81-1556. Act; enforcement; personnel. The director may designate trained employees of the department to enforce and administer the Nebraska Litter Reduction and Recycling Act and all rules and regulations adopted pursuant to the act. The director may contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of the act. All peace officers of this state or any political subdivision of this state shall enforce the provisions of the act and all rules and regulations adopted pursuant to the act and are empowered to issue citations to any person violating any provision of the act in their presence.

Source: Laws 1979, LB 120, § 23; Laws 1981, LB 253, § 13;
Laws 1993, LB 203, § 9.
Termination date October 30, 2010.

81-1557. Department; littering laws; appropriate provisions posted. The penalties which may be imposed for littering in this state and any provisions of the Nebraska Litter Reduction and Recycling Act deemed appropriate by the department shall be posted along public highways of this state, at visitor centers, at the entrance to state parks and recreation areas, at public beaches, and at such other public places as the department determines is necessary to accomplish the purposes of the act.

Source: Laws 1979, LB 120, § 24; Laws 1981, LB 253, § 14;
Laws 1993, LB 203, § 10.
Termination date October 30, 2010.

81-1558. Nebraska Litter Reduction and Recycling Fund; created; use; investment. There is hereby created within the state treasury a fund to be known as the Nebraska Litter Reduction and Recycling Fund. The proceeds of the fee imposed by sections 81-1559 to 81-1560.02, money received by the department as gifts, donations, or contributions toward the goals stated in section 81-1535, and money received by the department for nonprofit activities concerning litter reduction and recycling, including, but not limited to, honoraria, literature furnished by the department, and funds realized as reimbursement for expenses in conducting educational forums, shall be remitted to the State Treasurer for credit to such fund to be used for the administration and enforcement of the Nebraska Litter Reduction and Recycling Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1979, LB 120, § 25; Laws 1981, LB 253, § 15;
Laws 1993, LB 203, § 11; Laws 1994, LB 1066, § 113;
Laws 1999, LB 592, § 2.
Termination date October 30, 2010.

81-1559. Annual litter fee; manufacturer; wholesaler; rate; collection and administration; license; revocation; violation; penalty. (1) To aid in defraying the cost of administration of the Nebraska Litter Reduction and Recycling Act and the Waste Reduction and Recycling Incentive Fund, there shall be collected an annual litter fee equal to one hundred seventy-five dollars for each one million dollars of gross proceeds of products manufactured and the sales of which are consummated within this state, including byproducts, in the case of manufacturers and equal to one hundred seventy-five dollars for each one million dollars of the gross proceeds of the sales consummated within this state in the case of wholesalers. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom if the person performs only the growing or raising function of such animal, bird, or insect. Such fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 each year, based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The collection and penalty provisions of the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) No manufacturer or wholesaler in the state shall produce or sell any product which falls within the categories enumerated in this section and section 81-1560 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. If the applicant is an individual, the application for the license shall include the applicant's social security number. Failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section 81-1560.03, any manufacturer or wholesaler who fails to pay the fee imposed pursuant to subsection (1) of this section may have such license revoked in the same manner as permits are revoked pursuant to section 77-2705.

Source: Laws 1979, LB 120, § 26; Laws 1981, LB 253, § 19;
Laws 1986, LB 1027, § 222; Laws 1993, LB 203, § 12;
Laws 1997, LB 752, § 226.
Termination date October 30, 2010.

81-1560. Litter fee; manufacturer; wholesaler; products subject to; enumerated. The fee imposed by section 81-1559 shall be calculated only on the value of products or the gross proceeds of sales of products which directly contribute to litter as defined in section 81-1541 and which fall into the following categories: (1) Food for human or pet consumption; (2) groceries; (3) cigarettes and other tobacco products; (4) soft drinks and carbonated waters; (5) liquor, wine, and beer and other malt beverages; (6) household paper and paper products, excluding magazines, periodicals, newspapers, and literary works; (7) glass containers; (8) metal containers; (9) plastic or fiber containers made of synthetic material; and (10) cleaning agents and toiletries.

Source: Laws 1979, LB 120, § 27; Laws 1981, LB 253, § 20.
Termination date October 30, 2010.

81-1560.01. Annual litter fee; retailer; rate; collection and administration; license; revocation; violation; penalty. (1) There is hereby imposed on every person engaged in business within this state as a retailer selling products which fall within the

categories enumerated in section 81-1560.02 an annual litter fee equal to one hundred seventy-five dollars for each one million dollars of gross proceeds of the sales which are consummated within this state except as provided in sections 81-1560.02 to 81-1560.04. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of the animal, bird, or insect. The annual litter fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The collection and penalty provisions of the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) No retailer in this state shall sell any product which falls within the categories enumerated in section 81-1560.02 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Failure to obtain a license shall be a Class IV misdemeanor. Except as provided in sections 81-1560.02 to 81-1560.04, any retailer who fails to pay the fee imposed pursuant to subsection (1) of this section may have the license revoked in the same manner as permits are revoked pursuant to section 77-2705.

Source: Laws 1981, LB 253, § 16; Laws 1993, LB 203, § 13;
Laws 1995, LB 581, § 1.
Termination date October 30, 2010.

81-1560.02. Litter fee; retailer; products subject to fee. The fee imposed by section 81-1560.01 shall be calculated only on the gross proceeds of sales of products falling into the following categories:

(1) Food for human consumption, beverages, soft drinks, carbonated water, liquor, wine, beer, and other malt beverages, unless sold by retailers solely for consumption indoors on the retailer's premises;

(2) Food for pet consumption;

(3) Cigarettes and other tobacco products;

(4) Household paper and household paper products;

(5) Cleaning agents; and

(6) Kitchen supplies.

Source: Laws 1981, LB 253, § 17; Laws 1993, LB 203, § 14.
Termination date October 30, 2010.

81-1560.03. Litter fee; payment; nonduplication. Any person engaged in business as both a manufacturer and a retailer or as both a wholesaler and a retailer shall pay the fee either under section 81-1559 or 81-1560.01, whichever is greater. No person shall be required to pay a fee more than once on the same item or product under the Nebraska Litter Reduction and Recycling Act.

Source: Laws 1981, LB 253, § 18; Laws 1993, LB 203, § 15.
Termination date October 30, 2010.

81-1560.04. Litter fee; taxable and nontaxable sales; calculation. In lieu of requiring each license holder to separately account for taxable and nontaxable sales

under sections 81-1560.01 and 81-1560.02, the Tax Commissioner shall provide by rule and regulation that the tax imposed under section 81-1560.01 may be reported and paid based on a percentage of the sales for a particular type of business if the Tax Commissioner determines that the percentage reasonably approximates the taxable activity of the particular type of business.

Source: Laws 1993, LB 203, § 16.

Termination date October 30, 2010.

81-1561. Litter Fee Collection Fund; created; Nebraska Litter Reduction and Recycling Fund; distribution; procedure; purposes. (1) The Tax Commissioner shall deduct and withhold from the litter fee collected a fee sufficient to reimburse himself or herself for the cost of collecting and administering the litter fee and shall deposit such collection fee in the Litter Fee Collection Fund which is hereby created. The Litter Fee Collection Fund shall be appropriated to the Department of Revenue. Any money in the Litter Fee Collection Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The Tax Commissioner shall remit the balance of the litter fee collections to the Department of Environmental Quality. The department shall allocate and distribute funds from the Nebraska Litter Reduction and Recycling Fund in percentage amounts to be determined by the council on an annual basis, after a public hearing on a date to be determined by the council, for the following activities:

(a) Programs of public education, motivation, and participation aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with antilitter laws. Such programs shall include:

(i) The distribution of informative materials to elementary and secondary schools;

(ii) The purchase and erection of roadside signs;

(iii) The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;

(iv) Grants to state and local government units and agencies and private organizations for developing and conducting antilitter programs; and

(v) Any other public information method selected by the department, including the use of media;

(b) Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including, but not limited to:

(i) Grants to cities and counties for payment of personnel employed in the pickup of litter;

(ii) Grants for programs aimed at increasing the use of youth and unemployed persons in seasonal and part-time litter pickup programs and to establish work release and other programs to carry out the purposes of the Nebraska Litter Reduction and Recycling Act;

(iii) Grants to public and private agencies and persons to conduct surveys of amounts and composition of litter and rates of littering; and

(iv) Grants to public and private agencies and persons for research and development in the fields of litter reduction, removal, and disposal, including the

evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

(c) New or improved community recycling and source separation programs, including, but not limited to:

(i) Expansion of existing and creation of new community recycling centers;

(ii) Expansion of existing and creation of new source separation programs;

(iii) Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

(iv) Providing advice and assistance on matters relating to recycling and source separation, including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

Source: Laws 1979, LB 120, § 28; Laws 1981, LB 253, § 21;
Laws 1985, LB 273, § 69; Laws 1993, LB 3, § 53;
Laws 1993, LB 203, § 17; Laws 1994, LB 1066, § 114;
Laws 2003, LB 408, § 5; Laws 2005, LB 426, § 17.
Termination date October 30, 2010.

81-1562. Annual grants; separate application. All grants under section 81-1561 shall be made on an annual basis. A separate application shall be required for each grant sought.

Source: Laws 1979, LB 120, § 29.
Termination date October 30, 2007.

81-1563. Grant recipients; periodic reports. The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by grant recipients to insure that the purposes of the Nebraska Litter Reduction and Recycling Act are being achieved.

Source: Laws 1979, LB 120, § 30; Laws 1981, LB 253, § 22;
Laws 1993, LB 203, § 18.
Termination date October 30, 2007.

81-1565. Funds; department; adopt eligibility guidelines for recipients. The department shall adopt guidelines for the determination of eligibility of public and private agencies and persons to receive funds pursuant to the Nebraska Litter Reduction and Recycling Act and the determination of qualification and suitability of plans submitted by such agencies and persons consistent with the purposes of the act.

Source: Laws 1979, LB 120, § 32; Laws 1981, LB 253, § 23;
Laws 1993, LB 203, § 19.
Termination date October 30, 2010.

81-1566. Act; termination; extension; considerations. The Nebraska Litter Reduction and Recycling Act shall terminate on October 30, 2010, unless extended by the Legislature. In order to determine whether such extension shall occur, the department shall review and evaluate the extent to which the purposes of the act have been and are being achieved and the need for continuation of the program and requirements

established by the act. Such review and evaluation shall be completed at least six months prior to the date established by this section for termination of the act.

Source: Laws 1979, LB 120, § 33; Laws 1981, LB 253, § 24;
Laws 1985, LB 127, § 1; Laws 1992, LB 1257, § 93;
Laws 2001, LB 337, § 1; Laws 2005, LB 33, § 1.
Termination date October 30, 2010.

HAZARDOUS MATERIALS

81-1567. Terms, defined. As used in sections 81-1567 to 81-1570, unless the context otherwise requires:

(1) Discharge shall mean any leakage, seepage, or other release;

(2) Hazardous materials shall mean all materials and substances which are defined as hazardous by Nebraska or federal law or by the regulations of any Nebraska or federal government agency as of July 10, 1984; and

(3) Person shall mean any individual, partnership, limited liability company, corporation, association, or other entity.

Source: Laws 1984, LB 420, § 1; Laws 1993, LB 121, § 540.

81-1568. Volunteer; limitation on liability. Any volunteer or any person who provides assistance or advice in attempting to mitigate or in mitigating the effects of an actual or threatened discharge of hazardous materials or who attempts to prevent, dispose of, or clean up or prevents, disposes of, or cleans up any such discharge shall not be subject to any civil liability or penalty, except that the person whose act or omission, in whole or in part, caused such actual or threatened discharge shall be liable for any negligence of such volunteer or other person.

Source: Laws 1984, LB 420, § 2.

81-1569. Limitation on liability; exceptions. Section 81-1568 shall not apply to any person:

(1) Whose act or omission caused in whole or in part such actual or threatened discharge and who would otherwise be liable; or

(2) Who receives compensation other than reimbursement for out-of-pocket expenses for his or her services in rendering such assistance or advice.

Source: Laws 1984, LB 420, § 3.

81-1570. Liability; when. Nothing in section 81-1568 shall be construed to limit or otherwise affect the liability of any person for damages resulting from his or her gross negligence or reckless or intentional misconduct.

Source: Laws 1984, LB 420, § 4.

STORAGE OF HAZARDOUS SUBSTANCES

81-1575. Registration of storage tanks; registration form; fee; State Fire Marshal; rules and regulations. Commencing on January 1, 1986, the State Fire Marshal shall require the registration of all permanently located aboveground storage tanks used for the storage or dispensing of hazardous substances. A registration form

shall be provided by and filed with the State Fire Marshal. The registration form shall be updated to detail any change in the usage or operation of the tank as such changes occur. A copy of each registration form shall be forwarded by the State Fire Marshal to the fire department located nearest to the particular storage tank. A registration fee shall be assessed by the State Fire Marshal. The registration fee shall be in an amount which is deemed necessary by the State Fire Marshal to compensate for the costs of administrating sections 81-1575 to 81-1577, except that such fee shall not exceed ten dollars. All registration fees collected pursuant to this section shall be paid into the State Fire Marshal Cash Fund for the purpose of administering sections 81-1575 to 81-1577. The State Fire Marshal shall adopt and promulgate the rules and regulations he or she deems necessary to give notification to those individuals that need to register storage tanks under sections 81-1575 to 81-1577.

Source: Laws 1985, LB 383, § 1.

81-1576 Terms, defined. As used in sections 81-1575 to 81-1577, unless the context otherwise requires:

(1) Hazardous substance shall mean any substance defined in subsection (14) of section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as it existed on January 1, 1985, but not including any substance regulated as a hazardous waste under subtitle C of such act;

(2) Registration shall mean the submission of information on a form which includes, but is not limited to:

(a) A description of the type and size of the storage tank;

(b) The number of barrels or other measurement used to determine the storage capacity of the tank;

(c) A list of all hazardous substances which are or will be stored in the tank;

(d) The name and address of the facility at which the tank is located;

(e) The name and address of the person, firm, or corporation owning the storage tank and, if different, the name and address of the person who operates the storage tank;

(f) The name of the contact person and a telephone number where the contact person can be reached at any time in the event of an emergency involving the tank or facility at which the tank is located; and

(g) If the owner or operator of the storage tank is a public agency, the registration shall include the name of the supervisor of the division, section, or office which operates the tank; and

(3) Storage tank shall mean any tank having a storage capacity in excess of one thousand gallons used for the containment of hazardous substances for any period of time, except those tanks which are regulated under rules and regulations adopted pursuant to section 81-502 in accordance with standard K 61.1(1972) of the American National Standards Institute.

Source: Laws 1985, LB 383, § 2; Laws 2002, LB 1105, § 509.

81-1577. Registration; violation; penalty. Any person who is required to register pursuant to section 81-1575 or the rules and regulations thereunder and who fails to do so shall be guilty of a Class IV misdemeanor.

Source: Laws 1985, LB 383, § 3.

81-1577.01. Motor vehicle fuel storage tanks; aboveground tanks authorized. (1) The State Fire Marshal shall allow a tank used for the storage of motor vehicle fuel to remain aboveground if the tank was in existence on May 29, 1959, and is in compliance with the rules and regulations established pursuant to section 81-502.

(2) The State Fire Marshal shall permit by rule and regulation, in cities with a population of less than two thousand inhabitants, in villages, and in unincorporated areas, the installation of aboveground tanks to replace underground tanks used for the storage of motor vehicle fuel by dealers who sell motor vehicle fuel at retail. The capacity of the aboveground replacement tanks shall not exceed the total capacity of the underground tanks being replaced or eighteen thousand gallons per retail facility, whichever is less.

(3) For purposes of this section, dealers and motor vehicle fuel shall have the meanings provided in section 66-482 for importers and motor vehicle fuel.

Source: Laws 1990, LB 1118, § 1; Laws 1991, LB 627, § 143.

LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ACT

81-1578. Act, how cited. Sections 81-1578 to 81-15,116 shall be known and may be cited as the Low-Level Radioactive Waste Disposal Act.

Source: Laws 1986, LB 491, § 1; Laws 1987, LB 426, § 1; Laws 1988, LB 1092, § 1; Laws 1989, LB 761, § 1; Laws 1991, LB 837, § 2; Laws 1991, LB 716, § 1; Laws 1996, LB 1201, § 3.

81-1579. Legislative policy. (1) The Legislature hereby declares that it is the policy of the State of Nebraska, in furtherance of its responsibility to cooperate and coordinate with the Central Interstate Low-Level Radioactive Waste Compact Commission and to protect the health, safety, and welfare of its citizens and the environment:

(a) To provide for the availability of capacity either within or outside the state for the commercial disposal of low-level radioactive waste generated within the state at commercial low-level radioactive waste disposal facilities as designated by the Central Interstate Low-Level Radioactive Waste Compact Commission, except for waste generated as a result of defense or federal research and development activities;

(b) To recognize that low-level radioactive waste can be most safely and efficiently managed on a regional basis; and

(c) To institute and maintain a regulatory program for commercial disposal of low-level radioactive waste at such facilities.

(2) It is also the policy of the State of Nebraska that the cost of disposal of low-level radioactive waste be borne by the generators of such waste. In furtherance of such policy, the state shall not be liable for any financial subsidy of the construction and maintenance of a low-level radioactive waste disposal facility.

(3) The Legislature hereby finds that it is the policy of the state that a facility for the disposal of low-level radioactive waste shall be established at a location that best protects the health and safety of its citizens and the environment. In selecting such location, the developer shall emphasize geologic, topographic, demographic, hydrologic, and other technical factors that contribute to such protection and shall construct, operate, and maintain such facility in a manner consistent with state and federal requirements.

It is the intent of the Legislature that potential host communities be actively and voluntarily involved in the siting process. To the extent possible, consistent with the highest level of protection for the health and safety of the citizens of the state and protection of the environment, the developer shall make every effort to locate the facility where community support is evident.

Source: Laws 1986, LB 491, § 2; Laws 1987, LB 426, § 2; Laws 1988, LB 1092, § 2.

81-1579.01. Offices of commission; legislative intent. It is the intent of the Legislature that the Central Interstate Low-Level Radioactive Waste Compact Commission shall establish a satellite office in the State of Nebraska within thirty days after May 26, 1989, and shall establish its central offices in the State of Nebraska prior to commencement of construction of the facility.

Source: Laws 1988, LB 1092, § 7; Laws 1989, LB 761, § 2.

81-1580. Act; purpose. The purpose of the Low-Level Radioactive Waste Disposal Act is to effectuate the policies set forth in section 81-1579 by providing:

(1) A program of effective regulation of disposal of low-level radioactive waste based on zero-release objectives that will protect the public health and environment with an adequate margin of safety; and

(2) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to disposal of low-level radioactive waste.

Nothing in the Low-Level Radioactive Waste Disposal Act shall be intended to establish any other regulatory responsibilities pertaining to radioactive materials except for the licensing and regulation of a facility.

Source: Laws 1986, LB 491, § 3; Laws 1987, LB 426, § 3.

81-1581. Definitions, where found. For purposes of the Low-Level Radioactive Waste Disposal Act, unless the context otherwise requires, the definitions found in sections 81-1582 to 81-1597 shall be used.

Source: Laws 1986, LB 491, § 4; Laws 1987, LB 426, § 4; Laws 1988, LB 1092, § 3; Laws 1989, LB 761, § 3; Laws 1996, LB 1201, § 4.

81-1582. Byproduct material, defined. Byproduct material shall mean (1) any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

Source: Laws 1986, LB 491, § 5.

81-1583. Closure or site closure and stabilization, defined. Closure or site closure and stabilization shall mean those actions that are taken upon completion of operations which prepare the disposal site for custodial care and which assure that the disposal site will remain stable and will not need ongoing active maintenance.

Source: Laws 1986, LB 491, § 6.

81-1584. Council, defined. Council shall mean the Environmental Quality Council, defined. Council shall mean the Environmental Quality Council.

Source: Laws 1986, LB 491, § 7; Laws 1993, LB 3, § 54.

81-1584.01. Custodial care, defined. Custodial care shall mean the continued observation, monitoring, and care of a facility for a minimum of one hundred years following the operational life of the facility and closure pursuant to the rules and regulations of the department.

Source: Laws 1987, LB 426, § 5; Laws 1996, LB 1201, § 6.

81-1585. Decommissioning, defined. Decommissioning shall mean final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care.

Source: Laws 1986, LB 491, § 8.

81-1586. Department, defined. Department shall mean the Department of Environmental Quality.

Source: Laws 1986, LB 491, § 9; Laws 1993, LB 3, § 55.

81-1586.01. Developer, defined. Developer shall mean any person or commercial entity seeking to site, license, or operate a facility within this state.

Source: Laws 1988, LB 1092, § 4.

81-1587. Director, defined. Director shall mean the Director of Environmental Quality.

Source: Laws 1986, LB 491, § 10; Laws 1993, LB 3, § 56.

81-1588. Disposal, defined. Disposal shall mean the isolation and final disposition of radioactive waste from the biosphere by emplacement in a facility that employs technology dictated by a zero-release objective.

Source: Laws 1986, LB 491, § 11; Laws 1987, LB 426, § 6.

81-1589. High-level radioactive waste, defined. High-level radioactive waste shall mean (1) irradiated reactor fuel, (2) liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or equivalent in a facility for reprocessing irradiated reactor fuel, (3) solids into which such liquid wastes have been converted, and (4) other highly radioactive waste material as defined by the United States Nuclear Regulatory Commission.

Source: Laws 1986, LB 491, § 12.

81-1590. Facility, defined. Facility shall mean the land, building, and equipment selected pursuant to the Central Interstate Low-Level Radioactive Waste Compact and

used or to be used for the disposal of low-level radioactive waste.

Source: Laws 1986, LB 491, § 13; Laws 1987, LB 426, § 7; Laws 1989, LB 761, § 4.

81-1590.01. Licensed facility operator, defined. Licensed facility operator shall mean any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the department.

Source: Laws 1996, LB 1201, § 5.

81-1591. Low-level radioactive waste, defined. Low-level radioactive waste shall mean radioactive waste not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (2) of section 81-1582 and classified by the federal government as low-level radioactive waste but shall not include waste which remains a federal responsibility as designated in section 3(b) of the Low-Level Radioactive Waste Policy Act, as amended, 42 U.S.C. 2021C(b).

Source: Laws 1986, LB 491, § 14; Laws 1989, LB 761, § 5.

81-1591.01. Operational life of the facility, defined. Operational life of the facility shall mean the period of time commencing when low-level radioactive waste is initially received at the facility and ending when the facility permanently ceases to receive such waste for disposal.

Source: Laws 1989, LB 761, § 6.

81-1592. Person, defined. Person shall mean any individual, corporation, partnership, limited liability company, firm, association, joint venture, trust, estate, public or private institution, group, public agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but shall not include federal governmental agencies.

Source: Laws 1986, LB 491, § 15; Laws 1987, LB 426, § 8; Laws 1993, LB 121, § 541.

81-1593. Radioactive material, defined. Radioactive material shall mean any material, solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material shall include accelerator-produced, byproduct, naturally occurring, source, and special nuclear materials.

Source: Laws 1986, LB 491, § 16.

81-1594. Source material, defined. Source material shall mean (1) uranium or thorium or any combination thereof in any chemical or physical form or (2) ores which contain by weight one-twentieth of one percent or more of uranium or thorium or any combination thereof. Source material shall not include special nuclear material.

Source: Laws 1986, LB 491, § 17.

81-1595. Special nuclear material, defined. Special nuclear material shall mean (1) plutonium, uranium 233, and uranium enriched in the isotope 233 or in the isotope

235 but does not include source material or (2) any material artificially enriched by any of the foregoing, but shall not include source material.

Source: Laws 1986, LB 491, § 18.

81-1596. Spent nuclear fuel, defined. Spent nuclear fuel shall mean irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent fuel shall include the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

Source: Laws 1986, LB 491, § 19.

81-1597. Transuranic waste, defined. Transuranic waste shall mean radioactive waste containing alpha emitting transuranic elements at levels determined by the United States Nuclear Regulatory Commission to be transuranic waste.

Source: Laws 1986, LB 491, § 20.

81-1598. Department; designated agency. The department shall be designated as the agency responsible for the administration of the Low-Level Radioactive Waste Disposal Act.

Source: Laws 1986, LB 491, § 21.

81-1599. Department; powers and duties. The department shall have and may exercise the following powers and duties to carry out the Low-Level Radioactive Waste Disposal Act:

(1) Develop a program for the regulation of disposal of low-level radioactive waste based on a zero-release objective;

(2) Issue, modify, suspend, or revoke licenses or orders;

(3) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation;

(4) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(5) Enter upon any private or public property at all reasonable times to determine compliance with the act and rules and regulations adopted and promulgated pursuant to the act;

(6) Institute training programs to qualify personnel to administer the act and make such personnel available for participation in any programs of the federal government, other states, or interstate agencies in furtherance of the purposes of the act;

(7) Enter into agreements with the federal government, other states, or interstate agencies by which the department agrees to perform inspections and other functions relating to the disposal of low-level radioactive waste on a cooperative basis with the federal government, other states, or interstate agencies;

(8) Require submission of plans, specifications, and other data for siting, construction, and operation of a facility;

(9) Require proper operation and maintenance of a facility;

(10) Require licensees (a) to keep detailed records of each and every release which may cause or contribute to air, water, or land pollution or to the exposure to the environment of radioactive or hazardous substances, (b) to inform the department of each such event within twenty-four hours of its occurrence, and (c) to make such records available for inspection by the department, the public, and other interested persons;

(11) Require licensees to adopt low-level radioactive waste technological and operative procedures consistent with a zero-release objective; and

(12) Exercise all incidental powers necessary to carry out the purposes of the Low-Level Radioactive Waste Disposal Act.

Source: Laws 1986, LB 491, § 22; Laws 1987, LB 426, § 9.

81-1599.01. Acceptance of applications for licensure; limitation. The department shall not accept any applications for licensure as provided in section 81-15,101 prior to October 1, 1989.

Source: Laws 1988, LB 1092, § 13.

81-1599.02. Nebraska representatives to commission; appointment. Pursuant to the Central Interstate Low-Level Radioactive Waste Compact, Nebraska as the host state shall have two at-large voting members and one nonvoting member from the county in which the facility is located on the Central Interstate Low-Level Radioactive Waste Commission. The members of the commission representing Nebraska shall be appointed by the Governor with the approval of a majority of the members of the Legislature, and such members shall serve at the pleasure of the Governor. The Governor shall appoint the nonvoting member upon submission of an application for a license for the operation of a facility or on March 22, 1991, whichever occurs later. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature. If any appointee receives less than majority approval by the members of the Legislature, the Governor shall appoint another person to represent Nebraska on the commission within ten days of the failure to receive such approval. The members representing Nebraska on the commission may, when necessary, designate an alternate member to represent Nebraska.

Source: Laws 1989, LB 761, § 7; Laws 1991, LB 837, § 3.

81-15,100. Council; disposal of low-level radioactive waste; adopt rules and regulations; considerations. In order to carry out the purposes of the Low-Level Radioactive Waste Disposal Act, the council shall adopt and promulgate rules and regulations for the disposal of low-level radioactive waste. In adopting such rules and regulations, the council shall consider, but not be limited to, requirements for licensing, including terms, conditions, amendment, suspension, or revocation thereof, performance objectives and technical requirements, financial assurance, record-keeping, reporting, testing, and such other requirements established by the United States Nuclear Regulatory Commission at 10 C.F.R. part 61.

Source: Laws 1986, LB 491, § 23.

81-15,101. License application; contents; transfer; limitation; review, when; department; duties. (1) Each application for a license shall be in writing and shall state

such information as the department may determine to be necessary to decide the technical and financial qualifications or any other qualifications of the applicant deemed reasonable and necessary to protect the public health and environment with an adequate margin of safety. The applicant shall also describe the funding arrangements such applicant will make to provide for custodial care. The department may at any time after the filing of the application and before the expiration of the license require further written statements and may make such inspections as the department may deem necessary in order to determine whether the license should be modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee.

(2) No license issued under the Low-Level Radioactive Waste Disposal ct shall be assigned or in any manner disposed of unless the department, after securing full information, finds that the transfer is in accordance with the act and gives its consent in writing.

(3) If any person becomes the legal or beneficial owner of more than fifty percent of any class of the issued and outstanding equity securities of an applicant or licensee at any time after the application has been made and before the expiration of the license, the department shall conduct a review which shall include, but not be limited to, the environmental compliance record and financial responsibility of such person. At the conclusion of the review, the department shall issue a report of its findings, including its conclusions regarding the adequacy of such person to fulfill the provisions of the application or license and all laws, rules, and regulations. Copies of the report shall be sent to the Governor, Legislature, and local monitoring committee.

Source: Laws 1986, LB 491, § 24; Laws 1987, LB 426, § 10; Laws 1989, LB 761, § 8; Laws 1996, LB 1201, § 7.

81-15,101.01. Selection of site; local monitoring committee; establishment; members; powers and duties; technical assistance; immunity from liability; Local Site Selection Cash Fund; Local Monitoring Committee Cash Fund; created; use; investment. (1)(a) The developer shall send written notification by certified or registered mail to the Governor and the Legislature of the selection of three proposed sites by January 1, 1989. Within thirty days after such notification, a local monitoring committee shall be established for each proposed site area. The local monitoring committees shall only exist until a site is selected, except that the local monitoring committee for the selected site area shall continue to exist.

(b) The committees shall represent the citizens of the proposed site areas and maintain communication with the developer and the department to assure protection of public health and safety and the protection of the air, land, and water resources of the area. It is the intent of the Legislature that the local monitoring committees provide significant input concerning local needs and resources regarding all relevant aspects of the site selection and, after a site is selected, that the remaining local monitoring committee provide significant input concerning local needs and resources regarding all relevant aspects of the construction, operation, monitoring, closure, and custodial care of the facility. The functions and duties of the committees shall be established pursuant to rules and regulations adopted and promulgated by the council.

(c) Each local monitoring committee shall have access to all monitoring data collected at the site and may contract with a geologist or any other technical expert who

shall participate in the developer's onsite characterization and selection process. After a license is issued, the local monitoring committee may hire or contract with a qualified inspector as determined by the department. The inspector shall have the right of independent access to the facility and may inspect all records and activities at the site and carry out joint inspections with the department. The inspector shall report any violations to the department for appropriate action.

(2) The Conservation and Survey Division of the University of Nebraska shall provide without charge technical assistance to the local monitoring committee with the sampling, analysis, and testing provided for in this section, including, but not limited to, monitoring and performance of such sampling, analysis, and testing.

(3) Each local monitoring committee shall be composed of the following ten members, all of whom shall be residents of Nebraska:

(a) Two members selected from municipalities which have zoning jurisdiction within fifteen miles of the proposed site or, if there are no such municipalities, from the municipality in closest proximity to the proposed site, to be appointed by the chief executive officer of each municipality or by the governing body if there is no chief executive officer;

(b) Two members from the county in which the site is proposed, to be appointed by the governing body of the county. One member shall be an owner of real property that is within a three-mile radius of the proposed site, and one member shall be an at-large member;

(c) Two members appointed by the board of directors of the natural resources district in which the site is proposed; and

(d) Four members, to be appointed by the Governor, who reside within fifty miles of the proposed site, one of whom represents conservation, one of whom represents agriculture, one of whom is an at-large member, and one of whom is the chief of a fire department located within fifteen miles of the proposed site.

If the appointments required by subdivisions (a) through (c) of this subsection have not been made within thirty days after May 26, 1989, the Governor shall make such appointments. Appointment of a person ineligible to serve pursuant to the requirements of this section shall be considered the equivalent of not making an appointment.

(4) No member of a local monitoring committee shall be liable in any civil action for damages resulting from his or her acts of commission or omission arising out of and in the course of his or her rendering any services as such member in good faith. This section shall not grant immunity for the operation of a motor vehicle in connection with such services or to any member causing damages by willful and wanton acts of commission or omission.

(5) There is hereby created the Local Site Selection Cash Fund which shall be under the direction of the department. Fees or surcharges received pursuant to subdivision (1)(g) of section 81-15,104 shall be placed in the fund. The funds shall be appropriated equally among the committees and may be used for technical studies, determination of social and economic impact, and any other purpose deemed appropriate by such committees to the monitoring of the low-level radioactive waste site planning, construction, or maintenance to assure protection of the air, land, and water resources of the area. The committees shall file quarterly reports with the department verifying expenditures made pursuant to this subsection. The local monitoring committees may

hire clerical staff and purchase supplies. The local monitoring committees may not hire professional or technical staff but may contract for professional or technical services.

(6) There is hereby created the Local Monitoring Committee Cash Fund which shall be under the direction of the department. Fees or surcharges received pursuant to subdivision (1)(h) of section 81-15,104 shall be placed in the fund. The fees and surcharges collected pursuant to subdivision (1)(h) of section 81-15,104 shall not exceed one hundred thousand dollars per year and shall be used by such local monitoring committee for all reasonable and necessary costs in order to carry out this section. The local monitoring committee may hire clerical staff and purchase office supplies. Except for a qualified inspector hired pursuant to subdivision (1)(c) of this section, the local monitoring committee may not hire professional or technical staff but may contract for professional or technical services.

(7) Any money in the Local Site Selection Cash Fund or the Local Monitoring Committee Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(8) The State Treasurer shall transfer the entire balance in the Local Monitoring Committee Cash Fund, including any investment income credited to the fund, to the General Fund as soon as possible after August 15, 2005.

Source: Laws 1987, LB 426, § 15; Laws 1988, LB 1092, § 5;
Laws 1989, LB 761, § 9; Laws 1991, LB 716, § 3;
Laws 1994, LB 1066, § 116; Laws 2005, LB 426, § 18.

81-15,101.02. Applicant; design and planning requirements. No license for the operation of a facility shall be granted to any applicant who proposes a disposal design which uses traditional shallow land burial as used prior to 1979. The disposal cells of the facility shall be built above grade levels and designed to meet the state's zero-release objectives. An applicant shall present a disposal design for aboveground disposal or other technology which contains one or more engineered, artificially constructed barriers to isolate the waste from the surrounding environment. An applicant shall present a plan of continuous environmental monitoring to detect any releases of radiation from the disposal facility and having the capability of providing early warning of releases of radiation from the facility. The monitoring plan shall cover the operational life of the facility and such time period following site closure and stabilization that is necessary to protect the health and safety of the public. An applicant shall present a plan for the recovery, cleanup, or other corrective action necessary as a result of the release of radiation from the facility. The facility design shall include a plan for retrievability and removal of all waste.

Source: Laws 1987, LB 426, § 16; Laws 1989, LB 761, § 10.

81-15,101.03. Decommissioned nuclear reactor; waste; storage or disposal; waste from outside region; acceptance. (1) No low-level radioactive waste produced as a result of decommissioning a nuclear reactor shall be stored or disposed of at the facility until the department has determined that such facility is designed to safely store or dispose of such waste.

(2) Unless an emergency exists, no waste shall be accepted from outside the Central Interstate Low-Level Radioactive Waste Compact region without prior approval by the Legislature. No agreement entered into pursuant to an emergency situation shall extend beyond six months unless a continuation of the agreement is approved by the Legislature.

Source: Laws 1988, LB 1092, § 8; Laws 1989, LB 761, § 11.

81-15,101.04. Class C low-level radioactive waste; storage; disposal; requirements. Class C low-level radioactive waste, as defined by 10 C.F.R. 61.55 in effect on January 26, 1983, shall be stored or disposed of separately from other types of low-level radioactive waste in containers which can be easily monitored and retrieved and shall be handled, stored, and disposed of in a manner consistent with the zero-release objective described in section 81-1580.

Source: Laws 1988, LB 1092, § 9.

81-15,101.05. Mixed waste; requirements. Waste which is defined by the Nuclear Regulatory Commission or the federal Environmental Protection Agency as mixed waste shall be solidified, neutralized, and stabilized to the maximum degree practicable prior to shipment to the facility. Mixed waste which has not been treated to the degree required by this section shall not be disposed of at the facility.

Source: Laws 1988, LB 1092, § 10.

81-15,102. Disposal site; acquisition or acceptance; construction contracts; conditions; use; notice required; contract for management; management; remedial cleanup costs. (1) The state shall accept or acquire, by gift, transfer, or purchase, from the licensed facility operator, title to the land and appurtenances used for the disposal of low-level radioactive waste after the expiration of both the operational life and closure period of the facility, if:

(a) Both the Department of Health and Human Services Regulation and Licensure and the Department of Environmental Quality determine that (i) the requirements for site closure, decommissioning, and decontamination adopted pursuant to rules and regulations of the Department of Health and Human Services Regulation and Licensure and the Department of Environmental Quality which are allowed under federal law have been met by the licensed facility operator and (ii) such operator is in compliance with all financial requirements; and

(b) The amendments to the Central Interstate Low-Level Radioactive Waste Compact made by Laws 1991, LB 837, section 4, codified in section 71-3521, are in effect and have been ratified by Congress.

The title to the land and appurtenances shall be transferred without cost to the state. Such transfer of title to the state does not relieve the developer, licensed facility operator, or generators of such waste from liability for their actions that occurred whether known or unknown during the design, construction, operation, and closure of the facility. Sites received by gift or transfer shall be subject to approval and acceptance by the Legislature on behalf of the state.

(2) The applicant shall notify the Governor and the Legislature before beginning any onsite geological activity, such as soil core sampling, to determine the suitability of a site in the State of Nebraska for use as a facility.

(3) Lands and appurtenances which are used for the disposal of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of this section. Such lands and appurtenances shall be used exclusively for the disposal of low-level radioactive waste until the department determines that such exclusive use is not required to protect the public health, safety, welfare, or environment. Before such a site is leased for other use, the department shall require and assure that the radioactive waste history of the site be recorded in the permanent land records of the site. Remedial cleanup costs which become necessary during the period of custodial care shall be assessed first to the licensed facility operator, then proportionately against the generators of the radioactive waste and as set out in the Central Interstate Low-Level Radioactive Waste Compact found in section 71-3521.

(4) The state may contract for the management of a disposal site. The contractor shall be subject to licensing by the department and shall be subject to the surety and custodial care funding provisions of section 81-15,103.

(5) If and until licensing of a facility is approved, no further construction contracts shall be let or actual construction begun, other than filling the identified wetland, before the Department of Environmental Quality has conducted a six-month public education program to inform the people of the county and the people of the state of the exact characteristics of the facility to be built, which program shall be undertaken forthwith.

Source: Laws 1986, LB 491, § 25; Laws 1987, LB 426, § 11;
Laws 1994, LB 72, § 2; Laws 1996, LB 1201, § 8;
Laws 1997, LB 307, § 218; Laws 1998, LB 1174, § 1.

81-15,102.01. Property near facility; loss of value; compensation authorized; procedure. (1) Any owner of real property that is within a three-mile radius of the facility on the date a license for such facility is granted who believes that his or her property has declined in value as a result of construction of the facility or his or her heirs or assigns may apply for compensation as provided in this section. Any application for compensation shall be filed within five years of the date the facility first begins accepting low-level radioactive waste. Upon application by a real property owner, the county board of the county in which the facility is located shall hold a hearing to determine whether a loss of real property value has occurred. In reaching a decision, the county board shall consider the value of such property on the date a license is granted to the developer, using appraisals, valuations made by the county assessor of the county, data developed by the Property Tax Administrator, and any other relevant data, including appraisals which the county board may order. If the real property owner establishes by a preponderance of the evidence that his or her property has suffered loss which has not previously been compensated due to the construction of the facility, the developer shall provide compensation to the real property owner for the amount of the loss. Compensation shall be provided by the developer from fees assessed upon generators of low-level radioactive waste at the time such waste is delivered to the facility. Any real

property owner aggrieved by a final decision of the county board shall be entitled to an appeal in the same manner as appeals are taken pursuant to section 23-135.

(2) As used in this section, real property owner shall mean the owner of record in the office of the county register of deeds on the date a license is granted to the developer as provided in section 81-15,101 or his or her heirs or assigns.

Source: Laws 1988, LB 1092, § 11; Laws 1995, LB 490, § 188.

81-15,102.02. Department; testing of water and agricultural products. (1) The department shall offer to landowners directly adjacent to the facility's boundary an annual well and surface water sampling and analysis of any domestic water supply at no cost to the landowner.

(2) The department shall offer to landowners directly adjacent to the facility's boundary the opportunity for testing of agricultural products produced on the property for contamination by radioactivity. The testing shall be conducted pursuant to a plan developed by the department and at no cost to the landowner.

Source: Laws 1989, LB 761, § 16.

81-15,102.03. Developer; provide emergency training and equipment. The developer shall provide to the appropriate local political subdivision training of the first responding fire, police, and emergency medical services to handle emergency events at the facility and support for affected county emergency management planning, training, and central dispatch facilities as may be required to handle emergency events at the facility. The developer shall conduct such training programs or contract with appropriate public or private agencies for such training. The content of any such training program shall, prior to the commencement of the training program, be approved by the appropriate state agency, which is responsible for such emergency training activity. The developer shall also provide to the appropriate local political subdivision any equipment which is necessary to provide emergency response due to the location and operation of the facility.

Source: Laws 1989, LB 761, § 17; Laws 1997, LB 138, § 54.

81-15,103. Council; financial requirements; adopt rules and regulations; remedial cleanup costs; Radiation Site Closure and Reclamation Fund; Radiation Custodial Care Fund; created; use; investment; agreement with Department of Health and Human Services Regulation and Licensure. (1) For licensed activities involving disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee to provide an adequate surety or other financial arrangement sufficient to accomplish any necessary corrective action or cleanup on real or personal property caused by releases of radiation from a disposal site during the operational life and closure period of the facility and to comply with the requirements for decontamination, decommissioning, site closure, and stabilization of sites, and structures and equipment used in conjunction with such licensed activity, in the event the licensee abandons the facility or defaults for any reason in performing its operational, closure, or other requirements. Such sureties required under the license shall be compatible with applicable federal financial assurance regulations and shall be reviewed by the department at the time of license review under subsection (1) of section 81-

15,106. Any arrangement which constitutes self-insurance shall not be allowed. In addition to the surety requirements, the licensee shall purchase property and third-party liability insurance and pay the necessary periodic premiums at all times in such amounts as determined by the council pursuant to rules and regulations adopted and promulgated pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) All sureties required pursuant to subsection (1) of this section which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Site Closure and Reclamation Fund which is hereby created. Any money in the fund may be expended by the department as necessary to complete the requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) For licensed activities involving the disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee, before termination of the license, to make available such funding arrangements as may be necessary to provide for custodial care.

(4)(a) Remedial cleanup costs which become necessary during the operational life and closure of the facility shall be the responsibility of the licensed facility operator either directly or through applicable surety bonds, insurance, and other financial arrangements required pursuant to subsection (1) of this section, and (b) any remaining remedial cleanup costs which become necessary during the operational life and closure of the facility and which exceed funds available under subdivision (a) of this subsection shall be assessed proportionately by waste volume against the generators, then proportionately by waste volume against the party states as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(5) Remedial cleanup costs which become necessary during the period of custodial care shall be assessed (a) first, against the funds established pursuant to this section and any surety bonds, insurance, or other financial arrangements established for the facility, excluding such funds reserved for custodial care, (b) second, against the licensed facility operator, (c) third, against the generators based on proportionate waste volume, and (d) fourth, against the party states based on proportionate waste volume as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(6) All funds collected from licensees pursuant to subsection (3) of this section and subsection (1) of section 81-15,101 shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Custodial Care Fund which is hereby created. All interest accrued on money deposited in the fund may be expended by the department for the continuing custodial care, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the public health, safety, and environment. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(7) The department may, by contract, agreement, lease, or license with the Department of Health and Human Services Regulation and Licensure, provide for the

decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

Source: Laws 1986, LB 491, § 26; Laws 1987, LB 426, § 12;
Laws 1995, LB 7, § 127; Laws 1996, LB 1044, § 868;
Laws 1996, LB 1201, § 9.

81-15,104. Fees or surcharges for services; special assessment; failure to pay; effect; Low-Level Radioactive Waste Cash Fund; created; Investment. (1) The department shall collect fees or surcharges established by the council for radiation protection services provided pursuant to the Low-Level Radioactive Waste Disposal Act and the Central Interstate Low-Level Radioactive Waste Compact. Services for which fees or surcharges may be established include (a) issuance, amendment, and renewal of licenses for facilities, (b) inspection of licensees, (c) environmental custodial care activities to assess the radiological impact of activities conducted by licensees, (d) certification of personnel to operate the facility, (e) such other activities of department personnel which are reasonably necessary to assure that the licensed facility is being operated in accordance with the Low-Level Radioactive Waste Disposal Act and which reasonably should be borne by the licensee, (f) the budget of the Central Interstate Low-Level Radioactive Waste Compact Commission pursuant to Article IV, section (h)(2), of the compact, (g) payment by the developer of all reasonable and necessary costs of the local monitoring committees as prescribed in subsection (5) of section 81-15,101.01 until June 30, 1989, or until a site is selected, whichever is later, and (h) payment by the developer of all reasonable and necessary costs of the local monitoring committee where the facility is located as prescribed in subsection (6) of section 81-15,101.01.

(2) In determining the amount of such fees or surcharges, the council shall set the fees or surcharges in an amount sufficient to reimburse the state for its direct and indirect costs of the services specified in subsection (1) of this section. Any costs incurred by the State of Nebraska that exceed the fees or surcharges collected pursuant to this section shall be recovered through a special assessment against those generators of low-level radioactive waste which used the facility during the previous two years. The director shall compute the amount due from each generator based on the ratio of the fees or surcharges collected from a particular generator during the two-year period to the total fees or surcharges collected from all generators during such two-year period. Any special assessment collected pursuant to this section shall be remitted to the State Treasurer who shall credit it to the Low-Level Radioactive Waste Cash Fund. The council shall take into account any special arrangements between the state and a licensee, another state, or a federal agency from which the cost of the service is partially or fully recovered.

(3) When a licensee fails to pay the applicable fee or surcharge, the department may suspend or revoke the license or may issue an appropriate order.

(4) Except as provided in subsections (5) and (6) of section 81-15,101.01, any fees or surcharges collected pursuant to this section shall be deposited in the Low-Level Radioactive Waste Cash Fund, which fund is hereby created. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The State Treasurer shall transfer the entire balance in the Low-Level Radioactive Waste Cash Fund, including any investment income credited to the fund, to the General Fund as soon as possible after August 15, 2005.

Source: Laws 1986, LB 491, § 27; Laws 1987, LB 426, § 13; Laws 1988, LB 1092, § 6; Laws 1989, LB 761, § 12; Laws 1994, LB 1066, § 117; Laws 2005, LB 426, § 19.

81-15,105. Inconsistent ordinances, resolutions, or regulations; superseded. The Low-Level Radioactive Waste Disposal Act shall supersede ordinances, resolutions, or regulations, now or hereafter in effect, of the governing body of a municipality or county or of state agencies which are inconsistent with the act.

Source: Laws 1986, LB 491, § 28.

81-15,105.01. Acceptance of waste by facility; when. No waste shall be accepted by the facility until the amendments to the Central Interstate Low-Level Radioactive Waste Compact contained in Laws 1991, LB 837, are in effect in Kansas, Oklahoma, Louisiana, and Arkansas and have been ratified by Congress.

Source: Laws 1991, LB 837, § 1; Laws 1996, LB 1201, § 10.

81-15,106. License; term; review; revocation; denial; hearing; closure of facility. (1) Licenses shall provide that a facility shall not accept waste for a period longer than thirty years or until five million cubic feet of low-level radioactive waste has been received, whichever occurs sooner. Licenses shall be reviewed every five years subsequent to the date of issuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable laws, rules, and regulations. Nothing in this subsection shall preclude a license from being reviewed and modified at any time during its term.

(2) The department may issue an order temporarily or permanently closing a facility prior to its scheduled closing date if it finds there is a potential hazard to public health, safety, or the environment which justifies a temporary or permanent closure. A facility that is temporarily closed shall remain closed for as long as necessary for remedial action and throughout the period of facility cleanup and stabilization. Before authorizing the reopening of a temporarily closed facility, the department shall provide an explanation of its reasons for authorizing the reopening.

(3) Any license issued under the Low-Level Radioactive Waste Disposal Act shall be subject to revocation for failure of the licensee to comply with the terms and conditions of the license, the applicable rules and regulations, or the provisions of the act. Any person whose license has been revoked shall be afforded an opportunity for a hearing by the department upon written application made within thirty days after service of notice of such revocation.

(4) In any proceeding for the denial of an application for a license or for revocation, suspension, or modification of a license, the department shall provide to the applicant or licensee an opportunity for a hearing on the record.

Source: Laws 1986, LB 491, § 29; Laws 1987, LB 426, § 14; Laws 1989, LB 761, § 13.

81-15,107. License application; notice; hearing; environmental impact analysis required; appeal. (1) For any application for a license, the department shall provide an opportunity, after public notice, for written comments and shall hold a public hearing in the county in which the proposed facility is to be located. The cost of such hearing shall be borne by the applicant. All testimony offered at such hearing shall be recorded. The department shall issue a written determination of the action to be taken which is based upon findings to be included in the determination and upon evidence presented during the public comment period.

(2) The department shall prepare, for each licensed activity which has a significant impact on the human environment, a written analysis of the impact of such licensed activity on the environment. The environmental impact analysis shall address each subject listed in Public Law 91-190, Title I, section 102(2)(c), 83 Stat. 853, and supporting regulations. The department shall prohibit any construction with respect to any activity for which an environmental impact analysis is required prior to completion of such analysis. The analysis shall be available to the public at the time notice is given for the hearing held pursuant to this section and shall include:

(a) An assessment of the radiological and nonradiological impacts to the public health;

(b) An assessment of any impact on any waterways and ground water;

(c) Consideration of alternatives to the activities to be conducted, including alternative sites and engineering methods; and

(d) Consideration of the long-term impacts, including closure, decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such closure, decommissioning, decontamination, and reclamation.

(3) Any final agency action or order may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1986, LB 491, § 30; Laws 1987, LB 426, § 17; Laws 1988, LB 352, § 176.

81-15,108. Emergency order; hearing. Whenever the director finds that an emergency exists requiring immediate action to protect the public health and safety, the director may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency including, but not limited to, closure of the site. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately, but on application to the director, such person shall be afforded a hearing not later than ten days after receipt of such application. On the basis of such hearing, the director shall continue, modify, or revoke such order within thirty days after such hearing.

Source: Laws 1986, LB 491, § 31.

81-15,109. Violations of act; action to enjoin. Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the Low-Level Radioactive Waste Disposal Act or any rule, regulation, or order issued pursuant to the act, the Attorney General or county attorney may apply to the district court for an order enjoining such acts

or practices or for an order directing compliance. Upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Source: Laws 1986, LB 491, § 32.

81-15,110. Disposal of low-level radioactive waste; license required. It shall be unlawful for any person to dispose of low-level radioactive waste unless licensed by the department pursuant to the Low-Level Radioactive Waste Disposal Act.

Source: Laws 1986, LB 491, § 33.

81-15,111. Violation; criminal penalty. Any person who violates the Low-Level Radioactive Waste Disposal Act or rules, regulations, or orders issued pursuant to the act shall upon conviction be guilty of a Class IV felony.

Source: Laws 1986, LB 491, § 34.

81-15,112. Violation; civil penalty; procedure; appeal. (1) Any person who (a) violates any licensing provision of the Low-Level Radioactive Waste Disposal Act, any rule, regulation, or order issued pursuant to the act, or any term, condition, or limitation of any license issued pursuant to the act or (b) commits any violation for which a license may be revoked under rules or regulations issued pursuant to the act may be subject to a civil penalty, to be imposed by the department, not to exceed ten thousand dollars. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this section, the department shall notify such person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, or license involved in the violation, and (c) specifying each penalty which the department proposes to impose and its amount. Such written notice shall be sent by registered or certified mail by the department to the last-known address of such person. The person so notified may request a hearing, in writing, within thirty days of receipt of such notice. A hearing, if granted, shall be held in accordance with the Administrative Procedure Act. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such penalty, and the appeal shall be in accordance with the Administrative Procedure Act. On the request of the department, the Attorney General or county attorney may institute a civil action to collect a penalty imposed pursuant to this section.

Source: Laws 1986, LB 491, § 35; Laws 1988, LB 352, § 177.

81-15,112.01. Strict liability in tort; when. Any person engaged in the disposal of low-level radioactive waste shall be subject to strict liability in tort for property damage, bodily injury, or death resulting from such disposal.

Source: Laws 1988, LB 1092, § 12.

81-15,113. Contribution to Central Interstate Low-Level Radioactive Waste Compact Commission's budget; how paid. The state's annual contribution to the Central Interstate Low-Level Radioactive Waste Compact Commission's budget shall be paid by generators of low-level radioactive waste in this state which dispose of such waste in low-level radioactive waste disposal facilities through fees assessed by the department pursuant to section 81-15,104. Fees may be reasonably assessed on the basis of volume of the waste shipped and shall be deposited in the Low-Level Radioactive Waste Cash Fund. Such fees shall be due the first of July beginning in 1986 and shall continue until surcharges are collected pursuant to Article IV, section (h)(2), of the compact. There shall be no General Fund appropriation for the construction, maintenance, or long-term monitoring and care of a facility.

Source: Laws 1986, LB 491, § 36; Laws 1987, LB 426, § 18.

81-15,113.01. Community Improvements Cash Fund; created; surcharge; distribution; allocation; investment; legislative study. (1) There is hereby created the Community Improvements Cash Fund which shall be under the direction of the department. The Central Interstate Low-Level Radioactive Waste Compact Commission shall annually through 1998 remit to the department the funds received from the states belonging to the Central Interstate Low-Level Radioactive Waste Compact as compensation paid to the host state. When the facility begins operation, the developer shall levy, collect, and remit to the department a surcharge on the rates charged to the users of the facility which is sufficient to raise two million dollars per year together with any adjustments made by the department pursuant to this section. The department shall remit such surcharge to the State Treasurer who shall credit it to the Community Improvements Cash Fund. On October 1, 1990, and each October 1 thereafter, the department shall adjust the amount to be remitted by the developer by an amount equal to the percentage increase in the Consumer Price Index or, if publication of the Consumer Price Index is discontinued, a comparable index selected by the director. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall distribute money from the fund as follows:

(a) Prior to final site selection, three hundred thousand dollars per year shall be allocated for public purposes to be divided among the communities that are under active consideration to host the facility as provided in subsection (3) of this section;

(b) After the final site has been selected and until the facility is operational, three hundred thousand dollars per year shall be allocated for public purposes as provided in subsection (3) of this section. Acceptance of the funds distributed pursuant to this subdivision or subdivision (a) of this subsection shall in no way affect the siting process; and

(c) Once the facility is operational and during the operational life of the facility, the total amount in the fund shall be allocated each year for public purposes as provided in subsection (3) of this section.

(3) Money distributed pursuant to subdivisions (2)(a), (b), and (c) of this section shall be allocated as follows:

(a) Fifty percent of such money shall be distributed to incorporated municipalities which lie totally or partially within ten kilometers of the facility or the proposed facility based on the ratio of the population of the particular incorporated municipality to the total population of all such incorporated municipalities as determined by the latest federal census; and

(b) Fifty percent of such money shall be distributed to the county treasurer of the county where the facility is located or proposed to be located to be distributed to each political subdivision which levied property taxes on the property where the facility is located or proposed to be located. The money shall be distributed on the basis of the ratio of the total amount of taxes levied by each political subdivision to the total amount of property taxes levied by all such political subdivisions on such property based on the amounts stated in the most recent certificate of taxes levied submitted by each county to the Property Tax Administrator pursuant to section 77-1613.01.

(4) The Natural Resources Committee of the Legislature shall conduct a study to establish a formula for the equitable distribution of the funds specified in subdivision (2)(c) of this section. The committee shall hold public hearings necessary to carry out the purposes of the study.

(5) The State Treasurer shall transfer the entire balance in the Community Improvements Cash Fund, including any investment income credited to the fund, to the General Fund as soon as possible after August 15, 2005.

Source: Laws 1988, LB 1092, § 14; Laws 1989, LB 761, § 14; Laws 1993, LB 625, § 1; Laws 1994, LB 1066, § 118; Laws 1994, LB 1349, § 11; Laws 1995, LB 490, § 189; Laws 1995, LB 552, § 1; Laws 1997, LB 658, § 14; Laws 1998, LB 1174, § 2; Laws 2005, LB 426, § 20.

81-15,113.02. Generator; failure to fulfill responsibilities; effect. If a generator of low-level radioactive waste fails to fulfill its financial or regulatory responsibilities under either the Central Interstate Low-Level Radioactive Waste Compact or the Low-Level Radioactive Waste Disposal Act, the wastes generated by that generator shall not be received for disposal at the facility until the obligations are fulfilled.

Source: Laws 1989, LB 761, § 15.

81-15,114. Violation of Central Interstate Low-Level Radioactive Waste Compact; civil penalty. Any person who violates any provision of the Central Interstate Low-Level Radioactive Waste Compact shall be subject to a civil penalty of not more than ten thousand dollars per day of violation.

Source: Laws 1986, LB 491, § 37.

81-15,115. Violation of Central Interstate Low-Level Radioactive Waste Compact; action to enjoin; performance compelled. Any person violating the provisions of the Central Interstate Low-Level Radioactive Waste Compact may be enjoined from continuing such violation. An action may also be brought to compel performance of an obligation created by the compact. The court may require any person

who is adjudged responsible to do and perform any and all things within his or her power which are reasonably necessary to fulfill the obligation.

Source: Laws 1986, LB 491, § 38.

81-15,116. Violation of Central Interstate Low-Level Radioactive Waste Compact; Attorney General; duties. Any action for a violation of the Central Interstate Low-Level Radioactive Waste Compact or an action to enjoin a violation or to compel performance under the compact shall be brought by the Attorney General in the name of the state.

Source: Laws 1986, LB 491, § 39.

PETROLEUM PRODUCTS AND HAZARDOUS SUBSTANCES STORAGE AND HANDLING ACT

81-15,117. Act, how cited. Sections 81-15,117 to 81-15,127 shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

Source: Laws 1986, LB 217, § 1; Laws 1989, LB 289, § 31;
Laws 1991, LB 409, § 20; Laws 1996, LB 1226, § 14;
Laws 1998, LB 1161, § 39; Laws 2001, LB 461, § 10.

81-15,118. Legislative findings. The Legislature finds that the number of leaking underground storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because substances contained in leaking storage tanks are often potential ground water contaminants and major fire and explosive hazards.

For the reasons stated in this section, the Legislature deems it necessary to provide a program of storage tank registration and inspection as a preventative measure and a comprehensive leak cleanup program as a responsive measure. Primary responsibility for the Petroleum Products and Hazardous Substances Storage and Handling Act shall be with the Department of Environmental Quality. However, preventative measures described in such act shall also be carried out by the State Fire Marshal. The State Fire Marshal's actions shall be pursuant to an interagency agreement with the department.

Source: Laws 1986, LB 217, § 2; Laws 1993, LB 3, § 57.

81-15,119. Terms, defined. For purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, unless the context otherwise requires:

(1) Operator shall mean any person in control of, or having responsibility for, the daily operation of a tank but shall not include a person described in subdivision (2)(b) of this section;

(2)(a) Owner shall mean:

(i) In the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances; and

(ii) In the case of any tank in use before July 17, 1986, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(b) Owner shall not include a person who, without participating in the management a tank and otherwise not engaged in petroleum production, refining, and marketing:

(i) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(ii) Acquires ownership of a tank or the property on or within which a tank is or was located:

(A) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(B) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(c) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act;

(3) Permanent abandonment shall mean that a tank has been taken permanently out of service as a storage vessel for any reason or has not been used for active storage for more than one year;

(4) Person shall mean any individual, firm, joint venture, partnership, limited liability company, corporation, association, political subdivision, cooperative association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank;

(5) Petroleum product shall mean any petroleum product, including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas;

(6) Regulated substance shall mean any petroleum product and any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as such act existed on May 31, 2001, but not including any substance regulated as a hazardous waste under subtitle C of such act;

(7) Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank or any overfilling of a tank into ground water, surface water, or subsurface soils;

(8) Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action which is reasonable and necessary;

(9) Risk-based corrective action shall mean an approach to petroleum release corrective actions in which exposure and risk assessment practices, including appropriate consideration of natural attenuation, are integrated with traditional corrective actions to ensure that appropriate and cost-effective remedies are selected that are protective of human health and the environment;

(10) Tank shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Tank shall not include any:

(a) Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for consumptive use on the premises where stored, subject to a one-time fee;

(b) Tank with a storage capacity of one thousand one hundred gallons or less used for storing heating oil for consumptive use on the premises where stored, subject to a one-time fee;

(c) Septic tank;

(d) Tank situated in an underground area such as a basement, cellar, mine-working, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor;

(e) Pipeline facility, including gathering lines:

(i) Defined under 49 U.S.C. 60101, as such section existed on May 31, 2001; or

(ii) Which is an intrastate pipeline regulated under state law comparable to the law prescribed in subdivision (e)(i) of this subdivision;

(f) Surface impoundment, pit, pond, or lagoon;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storm water or wastewater collection system; and

(11) Temporary abandonment shall mean that a tank will be or has been out of service for at least one hundred eighty days but not more than one year.

Source: Laws 1986, LB 217, § 3; Laws 1987, LB 365, § 1;
Laws 1989, LB 289, § 32; Laws 1991, LB 409, § 22;
Laws 1993, LB 121, § 542; Laws 1996, LB 1226, § 15;
Laws 1998, LB 1161, § 40; Laws 2001, LB 461, § 11.

81-15,120. Farm or residential tank; heating oil storage tank; registration; when required; fee; Petroleum Products and Hazardous Substances Storage and Handling Fund; created; use; investment. Any farm or residential tank or tank used for storing heating oil as defined in subdivisions (10)(a) and (b) of section 81-15,119 shall be registered with the State Fire Marshal. The registration shall be accompanied by a one-time fee of five dollars and shall be valid until the State Fire Marshal is notified that a tank so registered has been permanently closed. Such registration shall specify the ownership of, location of, and substance stored in the tank to be registered. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Petroleum Products and Hazardous Substances Storage and Handling Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the Department of Environmental Quality to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, including the provision of matching funds required by Public Law 99-499 for actions otherwise authorized by the act. Any money in such fund

available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 217, § 4; Laws 1989, LB 816, § 1;
Laws 1993, LB 3, § 58; Laws 1994, LB 1066, § 119;
Laws 1996, LB 1226, § 16; Laws 1998, LB 1161, § 41;
Laws 2001, LB 461, § 12.

81-15,121. Tanks; permit; when required; fees; application; Underground Storage Tank Fund; created; Investment. (1) A person shall not (a) maintain or use any tank for the storage of regulated substances, (b) install any new tank, or (c) permanently close a tank without first securing a permit from the State Fire Marshal.

(2) A fee shall not be charged for a permit under subdivision (1)(a) or (c) of this section. The fee for a permit for installation shall be fifty dollars. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund.

(3) All owners of operating tanks, except those provided for in subsection (4) of this section, shall annually register each tank. All registration permits shall expire on December 31 of the year for which the permit was issued. The registration fee shall be thirty dollars per tank. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Underground Storage Tank Fund. Such permits shall contain the information specified in subsection (5) of this section.

(4) In the case of tanks permanently abandoned on or after January 1, 1974, an annual permit shall not be required and an initial registration permit shall be sufficient.

(5) The application for a registration permit shall be provided by and filed with the State Fire Marshal's office and shall require, but not be limited to, the following information:

(a) The date the tank was placed in or taken out of operation;

(b) The age of the tank;

(c) The size, type, and location of the tank; and

(d) The type of substances stored in the tank and the quantity of such substances remaining in the tank if the tank has been permanently closed.

(6) The registration permit fee collected pursuant to this section shall be deposited in the Underground Storage Tank Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the State Fire Marshal to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1986, LB 217, § 5; Laws 1987, LB 365, § 2;
Laws 1989, LB 816, § 2; Laws 1994, LB 1066, § 120;
Laws 1998, LB 1161, § 42.

81-15,122. Denial of permit; procedures; appeal. Before the State Fire Marshal denies an application for a permit, the affected person shall be given notice and opportunity for a hearing under procedures established by the State Fire Marshal. Upon receipt of the notification, any person aggrieved by the denial or revocation of a permit

may request a hearing within ten days or the decision of the State Fire Marshal shall become final. When the State Fire Marshal has reason to believe that a permitholder's activities create an immediate threat to public safety, a permit may be suspended until the hearing process is complete. Any person aggrieved by a final decision of the State Fire Marshal may appeal such action, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1986, LB 217, § 6; Laws 1988, LB 352, § 178.

81-15,123. State Fire Marshal; rules and regulations; considerations; requirements. The State Fire Marshal shall adopt and promulgate rules and regulations governing release, detection, prevention, and correction procedures applicable to all owners and operators as shall be necessary to protect human health, public safety, and the environment. Such rules and regulations may distinguish between types, classes, and ages of tanks. In making such distinctions, the State Fire Marshal shall consider, but not be limited to, location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry-recommended practices, national consensus codes, hydrogeology, depth to the ground water, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tanks, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated. Before adoption, such rules and regulations shall be reviewed and approved by the Director of Environmental Quality who shall determine whether the proposed rules and regulations are adequate to protect the environment. Rules and regulations adopted and promulgated pursuant to this section shall include, but not be limited to:

(1) Proper procedures and specifications for the construction, design, installation, replacement, or repair of tanks;

(2) A permit and registration system for all tanks;

(3) A program to establish an inspection system for all tanks. Such program shall provide for periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal. A fee schedule may also be developed for the inspection of new tank and piping installations and tank closures in the manner prescribed in section 81-505.01. Such inspection fees shall be remitted by the State Fire Marshal to the State Treasurer for credit to the Underground Storage Tank Fund. No fee shall be charged for the periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal;

(4) A monitoring system for all tanks which includes, but is not limited to, the following:

(a) An inventory-control procedure for any tank used to hold petroleum products or hazardous substances for resale;

(b) An inventory-control procedure for any tank used solely for consumptive onsite purposes and not for resale. Such control procedure shall determine the method of inventory measurement giving consideration to the economic burden created by the procedure. The frequency of inventory measurement for such category of tank shall include at least one measurement every thirty days;

(c) Provisions for the prompt reporting of any release of a regulated substance; and

(d) A procedure for the proper method of monitoring tanks;

(5) A procedure for notifying the State Fire Marshal of temporarily or permanently abandoned tanks;

(6) A procedure for removing or making safe any abandoned tanks, except that the State Fire Marshal may dispense with such procedure in special circumstances;

(7) Financial responsibility requirements, taking into account the financial responsibility requirements established pursuant to 42 U.S.C. 6991b(d);

(8) Requirements for maintaining a leak-detection system, an inventory-control system, and a tank-testing or comparable system or method designed to identify releases in a manner consistent with the protection of human health, public safety, and the environment;

(9) Requirements for maintaining records of any monitoring or leak-detection system, inventory-control system, or tank-testing or comparable system; and

(10) Provisions to establish a system for licensing tank installation and removal contractors.

Nothing in this section shall be construed to require a subcontractor working under the direction of a licensed installation or removal contractor to be licensed.

Source: Laws 1986, LB 217, § 7; Laws 1989, LB 816, § 3;
Laws 1991, LB 409, § 23; Laws 1993, LB 3, § 59;
Laws 1993, LB 720, § 1.

81-15,124. Release of regulated substance; Department of Environmental Quality; State Fire Marshal; powers and duties; remedial action plan. Any reported or suspected release of a regulated substance from any tank shall be investigated consistent with principles of risk-based corrective action by the State Fire Marshal and the Department of Environmental Quality. In the event that the State Fire Marshal or the department finds an adverse effect caused by a release of a regulated substance from a tank:

(1) The State Fire Marshal shall (a) determine the immediate danger presented by the release, (b) take all steps necessary to assure immediate public safety, and (c) assist the department in determining the source of the release and taking all steps necessary to ensure that the release is halted;

(2) By order of the department, the owner or operator of the tank causing the release shall, after securing the source of the release, develop a plan for remedial action to be approved by the department. The department shall inform the owner or operator of its approval or disapproval of a plan for remedial action within one hundred twenty days after receipt of a remedial action plan which contains all required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved; and

(3) The approved remedial action plan shall then be carried out by the owner or operator of the tank causing the release. All expenses incurred during the remedial action shall be paid by the owner or operator subject to reimbursement pursuant to the Petroleum Release Remedial Action Act.

If it is determined that the source of the release is unknown or that the owner or operator of the facility causing the release is unknown or unavailable, a remedial action plan shall be developed by or under the direction of the department. Such remedial

action plan shall be developed and carried out by the department with money from the Petroleum Products and Hazardous Substances Storage and Handling Fund if funds are available. If at a later date the owner or operator of the facility which caused the release is determined, he or she shall be responsible for remedial action costs incurred on his or her behalf subject to reimbursement pursuant to the Petroleum Release Remedial Action Act. Any money received from such person shall be deposited in the Petroleum Products and Hazardous Substances Storage and Handling Fund.

Source: Laws 1986, LB 217, § 8; Laws 1989, LB 289, § 33; Laws 1993, LB 3, § 60; Laws 1993, LB 237, § 5; Laws 1998, LB 1161, § 43.

81-15,124.01. Environmental Quality Council; rules and regulations. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations consistent with principles of risk-based corrective action governing all phases of remedial action to be taken by owners, operators, and other persons in response to a release or suspected release of a regulated substance from a tank. Such rules and regulations shall include:

(a) Provisions governing remedial action to be taken by owners and operators pursuant to section 81-15,124;

(b) Provisions by which the Department of Environmental Quality may determine the cleanup levels to be achieved through soil or water remediation and the applicable limitations for air emissions at the petroleum release site or occurring by reason of such remediation; and

(c) Such other provisions necessary to carry out the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) In developing rules and regulations, the Environmental Quality Council shall take into account (a) risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action applicable to petroleum release sites and (b) rules and regulations proposed by the technical advisory committee established in section 81-15,189.

Source: Laws 1989, LB 289, § 34; Laws 1993, LB 3, § 61; Laws 1996, LB 1226, § 18; Laws 1998, LB 1161, § 44.

81-15,124.02. Access to property. If necessary in the course of an investigation or inspection or during the remedial action and if the owner of property or the owner's agent has specifically denied the Department of Environmental Quality access to the property for such purposes, the department may order the owner or owner's agent to grant access to property for the performance of reasonable steps, including drilling, to determine the source and extent of contamination or for remediation. Access shall be by the department or by a person conducting an investigation, inspection, or remedial action at the direction of the department. All actions taken on the property shall be performed in the least obtrusive manner possible to allow the investigation, inspection, or remedial

action to proceed. Upon completion of any such actions, the property shall be restored as nearly as possible to its original condition.

Source: Laws 1991, LB 409, § 21; Laws 1993, LB 3, § 62.

81-15,124.03. Remedial action plan; considerations. The plan for remedial action shall take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials standards.

Source: Laws 1996, LB 1226, § 17.

81-15,124.04. Risk-based corrective action; department provide briefing. The Department of Environmental Quality shall provide briefing on the use by the department of risk-based corrective action. The briefing shall be directed toward comprehension and knowledge of the use by the department of risk-based corrective action, and a fee may be charged for attending the briefing which shall be remitted to the State Treasurer for credit to the Petroleum Release Remedial Action Cash Fund. The department may contract for providing such briefing and shall maintain and make available to the public a list of attendees.

Source: Laws 1998, LB 1161, § 45.

81-15,124.05. Remedial action plan; certificate of completion; form; effect. (1) If a remedial action plan submitted by a responsible person as defined in section 66-1514 is approved or deemed to be approved by the Department of Environmental Quality pursuant to subdivision (2) of section 81-15,124 and has been carried out, the department may issue to the responsible person a certificate of completion stating that no further remedial action needs to be taken at the site relating to any contamination for which remedial action has already been taken in accordance with the approved remedial action plan. The department shall condition the certificate of completion upon compliance with any monitoring, institutional, or technological controls that may be necessary and which were relied upon by the responsible person to demonstrate compliance with the remedial action plan. Any certificate of completion issued pursuant to this section shall be in a form which can be filed for record in the real estate records of the county in which the remedial action took place. The responsible person shall file the certificate of completion and notify the department within ten days after issuance as to the date and location of the real estate filing. If the department issues a certificate of completion to a responsible person under this section, a covenant not to sue shall arise by operation of law subject to subsection (2) of this section. The covenant not to sue releases the responsible person from liability to the state and from liability to perform additional environmental assessment, remedial activity, or response action with regard to the release of a petroleum product for which the responsible person has complied with the requirements of this subsection. The covenant not to sue shall be voided if the responsible person fails to conduct additional remedial action as required under subsection (2) of this section, if a certificate of completion is revoked by the department under subsection (3) of this section, or if the responsible person fails to comply with the

monitoring, institutional, or technological controls, if any, upon which the certificate of completion is conditioned.

(2) A certificate of completion issued by the department under subsection (1) of this section shall require the responsible person to conduct additional remedial action in the event that any monitoring conducted at or near the real property or other circumstances indicate that (a) contamination is reoccurring, (b) additional contamination is present for which remedial action was not taken according to the remedial action plan, or (c) contamination from the site presents a threat to human health or the environment and was not addressed in the remedial action plan.

(3) A certificate of completion shall be revoked if the department demonstrates by a preponderance of the evidence that any approval provided under this section was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department. The department shall file a copy of the notice of revocation of any certificate of completion in the real estate records of the county in which the remedial action took place within ten days after such revocation.

(4) If a responsible person transfers property to an affiliate in order for that affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this section or to avoid an obligation under this section, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this section.

(5)(a) A covenant not to sue arising under subsection (1) of this section, unless voided pursuant to such subsection, shall bar suit against any person who acquires title to property to which a certificate of completion applies for all claims of the state or any other person in connection with petroleum products which were the subject of an approved remedial action plan and (b) a person who purchased a site before May 31, 2001, is released, upon the issuance of a certificate of completion under this section or upon the issuance of a no further action letter on or after May 31, 2001, pursuant to section 81-15,186, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate of completion or the no further action letter before the purchase date, except as provided in subsection (4) of this section, for releases or consequences that the person contributed to or caused, for failure by such person to comply with the monitoring, institutional, or technological controls, if any, upon which the certificate of completion is conditioned, or in the event the certificate of completion is revoked by the department under subsection (3) of this section.

(6) Any person entitled to the protections of the covenant not to sue or eligible to be released from liability pursuant to the issuance of a certificate of completion or a no further action letter under subsection (5) of this section who is ordered by the department to take remedial action shall be eligible for reimbursement as a responsible person pursuant to section 66-1525 and shall not be required to pay the first cost or percent of the remaining cost as provided in subsection (1) of section 66-1523 unless such person contributed to or caused the release or failed to comply with the monitoring, institutional, or technological controls, if any, imposed under subsection (1) of this section.

Source: Laws 2001, LB 461, § 13.

81-15,124.06. Remedial action plan; certificate of completion; immunity. Upon issuance of a certificate of completion under section 81-15,124.05, except as

otherwise provided in such section, the responsible person shall no longer have liability to the state as to the release of petroleum products for which compliance with the remedial action plan is demonstrated by the responsible person.

Source: Laws 2001, LB 461, § 14.

81-15,124.07. Remedial action plan; participation; effect. 1) Participating in a remedial action plan does not constitute an admission of liability under the laws of this state, the rules and regulations adopted pursuant to law, or the ordinances and resolutions of any political subdivision or an admission of civil liability under statutory or common law of this state.

(2) The fact that a responsible person has participated in a remedial action plan is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce sections 81-15,124.05 to 81-15,124.07.

(3) Participating in a remedial action plan shall not be construed to be an acknowledgment that the conditions of the affected area identified and addressed by the remedial action plan constitute a threat or danger to the public health or safety or the environment.

Source: Laws 2001, LB 461, § 15.

81-15,125. Violation; penalty. Any person violating the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders of the State Fire Marshal or the Department of Environmental Quality adopted or issued pursuant to such act shall be subject to a civil fine of not more than five thousand dollars for each offense and, in the case of a continuing violation, each day of violation shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the size of the operation and the degree and extent of the pollution.

Source: Laws 1986, LB 217, § 9; Laws 1993, LB 3, § 63.

81-15,126. Violation; action to enjoin. The Department of Environmental Quality or the State Fire Marshal may apply to the district court of the county where the violation is occurring or about to occur for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders adopted and promulgated under the act. The court shall have jurisdiction to grant relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

Source: Laws 1986, LB 217, § 10; Laws 1993, LB 3, § 64.

81-15,127. Notice of registration requirements; duty to provide. (1) Any person who deposits regulated substances in a tank shall reasonably notify the owner or operator of such tank of the owner's or operator's registration requirements pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act.

(2) The Department of Environmental Quality shall design and make available a

printed notice of registration for owners of tanks to any person who deposits regulated substances in a tank.

Source: Laws 1986, LB 217, § 11; Laws 1993, LB 3, § 65.

WASTEWATER TREATMENT OPERATOR CERTIFICATION ACT

81-15,128. Act, how cited. Sections 81-15,128 to 81-15,143 shall be known and may be cited as the Wastewater Treatment Operator Certification Act.

Source: Laws 1987, LB 533, § 1.

81-15,129. Terms, defined. As used in the Wastewater Treatment Operator Certification Act, unless the context otherwise requires:

(1) Certificate shall mean a certificate of competency issued by the director or his or her duly authorized representative certifying that the operator has met the requirements for the specified operator classification of the certification program;

(2) Council shall mean the Environmental Quality Council;

(3) Department shall mean the Department of Environmental Quality;

(4) Director shall mean the Director of Environmental Quality;

(5) Nationally recognized association of certification authorities shall mean an organization or organizations selected by the director which (a) serve as an information center for certification activities, (b) recommend minimum standards and guidelines for classification of wastewater treatment facilities and certification of operators, (c) facilitate reciprocity between state programs, (d) assist authorities in establishing new certification programs and updating existing ones, and (e) provide testing services;

(6) Operator shall mean any person who regularly makes recommendations or is responsible for process control decisions at a wastewater treatment facility. Operator shall not include a person whose duties are limited solely to laboratory testing or maintenance or who exercises general or indirect supervision only;

(7) Voluntarily certified operator shall mean an operator who holds a certificate of competency described in section 81-15,133; and

(8) Wastewater treatment facility shall mean the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludge.

Source: Laws 1987, LB 533, § 2; Laws 1993, LB 3, § 66.

81-15,130. Council; adopt rules and regulations; contents. In order to carry out the purposes of the Wastewater Treatment Operator Certification Act, the council shall adopt and promulgate rules and regulations. Such rules and regulations shall include, but not be limited to:

(1) Establishing and carrying out procedures for the certification program provided for in the act;

(2) Classification of wastewater treatment facilities. Such classification shall be based on the size and type of wastewater treatment facility, the quality and quantity of wastewater to be treated, and other physical, chemical, and biological conditions affecting such treatment facilities and according to the skill, knowledge, and experience that the operator must have to supervise successfully the operation of the facilities so as to protect the public health and to protect the waters of the state;

(3) A procedure to be carried out by the department to receive applications and examine the qualifications of applicants for certification;

(4) Development of a training and continuing educational program including regular training schools, short courses, conferences, and programs. The council shall adopt procedures and minimum requirements for the approval of correspondence courses, required classroom instruction, and minimum attendance standards to maintain certification;

(5) Requirements for the maintenance of records of the classification of wastewater treatment facilities;

(6) Distribution of applications and notices of examinations;

(7) Procedures in the department for preparing, conducting, and grading examinations either by the department or by its representatives or persons conducting approved training schools, short courses, conferences, and programs, including correspondence courses;

(8) A fee schedule to be implemented by the department which shall include a fee designed to cover direct and indirect costs associated with applicant's certification but not to exceed one hundred fifty dollars per application. Fees may also be charged by the department for each educational program to be paid by the participant. Such fee shall be an amount necessary to cover program costs;

(9) Procedures and requirements to allow the director to issue temporary certificates as provided in section 81-15,135; and

(10) Provisions for granting exemptions to operators of individual septic tank systems, nondischarging lagoon systems, and other disposal systems as determined by the council.

Source: Laws 1987, LB 533, § 3.

81-15,131. Director; powers and duties. The director shall have authority to exercise all incidental powers necessary to carry out the purposes of the Wastewater Treatment Operator Certification Act. In carrying out such powers the director shall advise, consult, and cooperate with agencies of the state, the federal government, other states, interested groups, political subdivisions, and industries.

Source: Laws 1987, LB 533, § 4.

81-15,132. Operator certification without examination; recommended by governing body or owner. The director may provide for certification without examination of any operator recommended by a governing body or owner as having been in charge of the operation or supervising the operation of a wastewater treatment facility on August 30, 1987, and whose competence has been demonstrated. Certificates issued under this section shall be valid for a period of four years from August 30, 1987. After such four-year period, certificates granted under this section shall no longer be valid, and such operators shall become fully certified under the Wastewater Treatment Operator Certification Act.

Source: Laws 1987, LB 533, § 5.

81-15,133. Operator certification without examination; holder of certificate of competency. The director shall provide for certification without examination of operators

who, on August 30, 1987, hold certificates of competency issued pursuant to a program which the director determines meets the requirements of the Wastewater Treatment Operator Certification Act.

Source: Laws 1987, LB 533, § 6.

81-15,134. Wastewater treatment facilities; supervision required; exceptions. Within two years following August 30, 1987, all wastewater treatment facilities shall be under the supervision of an operator certified by the director at least to the level of classification of the wastewater treatment facility to be supervised by such operator, except that individual septic tank systems and individual wastewater treatment lagoons for domestic wastewater treatment shall be exempt from the Wastewater Treatment Operator Certification Act. No operator shall be required to be certified in a classification other than that corresponding to the classification of the wastewater treatment facility to be supervised by the operator.

Source: Laws 1987, LB 533, § 7.

81-15,135. Temporary certificate. The director shall have the authority to issue a temporary certificate to an operator of a wastewater treatment facility which relies on the services of one person for its operation. A temporary certificate shall be valid for a period of one year after which time such operator shall be required to become fully certified under the Wastewater Treatment Operator Certification Act.

Source: Laws 1987, LB 533, § 8.

81-15,136. Certificate; revoke, suspend, or refuse; grounds. The director may revoke, suspend, or refuse to grant the certificate of an operator, following opportunity for hearing, upon any reasonable ground including, but not limited to, the following: (1) The operator has practiced fraud or deception; (2) reasonable care was not used in the performance of duties; (3) the operator is unable to perform duties properly; or (4) for failure to maintain the minimal continuing education requirements of the Wastewater Treatment Operator Certification Act.

Source: Laws 1987, LB 533, § 9.

81-15,137. Hearings; procedures applicable. All hearings shall be conducted in accordance with procedures established in section 81-1507.

Source: Laws 1987, LB 533, § 10.

81-15,138. Certificate; term; renewal. Certificates shall expire two years from the date of issuance and shall be renewed by the director if the applicant has met minimum continuing education requirements and if other provisions of section 81-15,136 do not apply. Operators shall be given sixty days' notice prior to expiration of their certificates and shall have a ninety-day period after such expiration to renew their certificates.

Source: Laws 1987, LB 533, § 11.

81-15,139. Certification required; when. On and after two years following August 30, 1987, unless the director determines that an emergency exists, it shall be unlawful for any wastewater treatment facility to be operated unless its operator is duly certified under

the Wastewater Treatment Operator Certification Act at the level of classification of the facility to be operated.

Source: Laws 1987, LB 533, § 12.

81-15,140. Reciprocal certification agreements; director; duties. (1) The director shall provide for reciprocal certification agreements with other states, territories, and countries if the requirements for certification by such other states, territories, and countries do not conflict with the Wastewater Treatment Operator Certification Act and are as stringent as those required by this state.

(2) In making determinations pursuant to subsection (1) of this section, the director may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities.

Source: Laws 1987, LB 533, § 13.

81-15,141. Violation; penalty. Any person violating any provisions of the Wastewater Treatment Operator Certification Act or the rules and regulations adopted and promulgated pursuant to such act shall be subject to a civil fine of not more than five hundred dollars for each offense, and in the case of a continuing violation, each day of violation shall constitute a separate offense.

Source: Laws 1987, LB 533, § 14.

81-15,142. Appeal. Any person aggrieved by an order or decision of the director may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1987, LB 533, § 15; Laws 1988, LB 352, § 179.

81-15,143. Wastewater Treatment Operator Certification Cash Fund; created; use; investment. All fees collected pursuant to the Wastewater Treatment Operator Certification Act shall be remitted to the State Treasurer for credit to the Wastewater Treatment Operator Certification Cash Fund which is hereby created. Such fund shall be administered by the department for the purposes of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1987, LB 533, § 16; Laws 1995, LB 7, § 128.

WASTEWATER TREATMENT FACILITIES CONSTRUCTION ASSISTANCE ACT

81-15,147. Act, how cited. Sections 81-15,147 to 81-15,158 shall be known and may be cited as the Wastewater Treatment Facilities Construction Assistance Act.

Source: Laws 1988, LB 766, § 1; Laws 1989, LB 311, § 7.

81-15,148. Legislative findings. The Legislature finds that the construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment works are essential to protecting and improving the state's water quality, that protecting water quality is an issue of concern to all citizens of the state, that in addition to protecting and improving the state's water quality, adequate wastewater treatment works are essential to economic growth and development, and that the amount

of needed assistance which may be provided to municipalities or counties for wastewater treatment purposes can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue bonds and the deposit of the proceeds thereof into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds that construction, rehabilitation, operation, and maintenance of nonpoint source control systems are essential to water quality protection, that such systems are financially burdensome to municipalities and counties, and that the amount of needed assistance which may be provided to municipalities or counties for nonpoint source control systems can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue bonds and the deposit of the proceeds thereof into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for the purpose of financing the fund serves a public purpose by assisting municipalities or counties in providing and improving wastewater treatment facilities and nonpoint source control systems and thereby providing clean water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state and its political subdivisions. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

Source: Laws 1988, LB 766, § 2; Laws 1989, LB 311, § 8; Laws 1994, LB 1139, § 38; Laws 1996, LB 1226, § 21.

81-15,149. Terms, defined. As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act means the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of wastewater treatment works or nonpoint source control systems; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works or nonpoint source control systems; or the inspection or supervision of any of the foregoing items;

(3) Council means the Environmental Quality Council;

(4) County means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;

(5) Department means the Department of Environmental Quality;

(6) Fund means the Wastewater Treatment Facilities Construction Loan Fund;

(7) Municipality means any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(8) Nonpoint source control systems means projects which establish the use of methods, measures, or practices to control the pollution of surface waters and ground water that occurs as pollutants are transported by water from diffuse or scattered sources. Such projects include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures applied before, during, and after

pollution-producing activities. Sources of nonpoint source pollution may include, but are not limited to, agricultural, forestry, and urban lands, transportation corridors, stream channels, mining and construction activities, animal feeding operations, septic tank systems, underground storage tanks, landfills, and atmospheric deposition;

(9) Operate and maintain means all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works or nonpoint source control systems in accordance with its intended purpose; and

(10) Wastewater treatment works means the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Source: Laws 1988, LB 766, § 3; Laws 1993, LB 3, § 67;
Laws 1994, LB 1139, § 39; Laws 1996, LB 1226, § 22;
Laws 2003, LB 164, § 1; Laws 2004, LB 916, § 27.

81-15,150. Federal grants; director; powers. The director may obligate and administer any federal grants to municipalities and counties for construction of publicly owned wastewater treatment works or nonpoint source control systems pursuant to the Clean Water Act.

Source: Laws 1988, LB 766, § 4; Laws 1994, LB 1139, § 40;
Laws 1996, LB 1226, § 23.

81-15,151. Wastewater Treatment Facilities Construction Loan Fund; transfers authorized; Construction Administration Fund; created; use; investment. (1) The Wastewater Treatment Facilities Construction Loan Fund is hereby created. The fund shall be held as a trust fund for the purposes and uses described in the Wastewater Treatment Facilities Construction Assistance Act.

The fund shall consist of federal capitalization grants, state matching appropriations, repayments of principal and interest on loans, and other money designated for the fund. The Director of Environmental Quality may make loans from the fund pursuant to the act and may use up to four percent of all federal capitalization grant awards to the fund for the reasonable cost of administering the fund and conducting activities under Title VI of the federal Clean Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such

appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

Prior to December 31, 1996, money or obligations from the Petroleum Release Remedial Action Cash Fund may be transferred to or deposited in the Wastewater Treatment Facilities Construction Loan Fund as designated by the Director of Environmental Quality. Prior to December 31, 1996, the fund and the assets thereof, including federal capitalization grants, not otherwise pledged for inconsistent purposes may be, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, in whole or in part transferred to or invested in obligations of the Petroleum Release Remedial Action Cash Fund at the direction of the director in a manner consistent with section 66-1519.01.

(2) There is hereby created the Construction Administration Fund. Any funds available for administering loans or fees collected pursuant to the Wastewater Treatment Facilities Construction Assistance Act shall be deposited in such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

Source: Laws 1988, LB 766, § 5; Laws 1989, LB 623, § 1;
Laws 1989, LB 311, § 9; Laws 1993, LB 3, § 68;
Laws 1994, LB 1066, § 121; Laws 1996, LB 1226, § 24.

81-15,151.01. Obligation to repay loan; effect. If funds are loaned to or otherwise deposited in the Wastewater Treatment Facilities Construction Loan Fund with an obligation to repay such loan or deposit, the obligation to repay the amount of the loan or deposit and the interest thereon shall, upon authorization by the council and execution and delivery by the department of an agreement to repay the loan or deposit, be a valid and binding obligation of the fund and payable in accordance with the terms of the agreement executed by the department.

Source: Laws 1989, LB 311, § 12.

81-15,151.02. Pledge of fund or assets; effect. Any pledge of the Wastewater Treatment Facilities Construction Loan Fund or any part thereof or any pledge of the assets of the fund made by the department as authorized by the council shall be valid and binding from the time the pledge is made. The revenue, money, or assets so pledged and thereafter received by the fund shall immediately be subject to a lien of such pledge without any physical delivery thereof or further act, and the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the fund or the assets thereof, regardless of whether the parties have notice of the lien. Neither the action by the council, the pledge agreement executed by the department, nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1989, LB 311, § 13.

81-15,152. Council; powers and duties. The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements for making loans under the Wastewater Treatment Facilities Construction Assistance Act;

(2) The power to adopt a system for the ranking of wastewater treatment construction projects with known needs or for which loan applications have been received by the department. In establishing the system the council shall consider, among other things, the severity of pollution, public health, water quality impact, population, financial capability, and eligibility of the construction project for federal or state funds. This priority system shall be reviewed annually by the council;

(3) The power to adopt and promulgate rules and regulations to govern types of nonpoint source control system projects which will be eligible for loans and to adopt a system for priority ranking of such projects;

(4) The power to adopt a system of establishing interest rates to be charged on loans. The system shall presume that the current market interest rate shall be charged unless a municipality or a county demonstrates a serious financial hardship. The system may allow discounted interest rates for short-term loans. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Wastewater Treatment Facilities Construction Assistance Act. Such fee shall be based on the availability of federal funding for such purpose and the projected administrative needs for carrying out the purposes of the act;

(6) The power to determine the maximum amount of any one loan or combination of loans for any single municipality or any single county;

(7) Except as limited by section 81-15,151, the power to obligate the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to or deposits into the fund, including bonds, the proceeds of which are deposited into the fund; and

(8) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements, including any funding caps and cost-share requirements, for grants pursuant to subdivision (10) of section 81-15,153.

Source: Laws 1988, LB 766, § 6; Laws 1989, LB 623, § 2;
Laws 1989, LB 311, § 10; Laws 1994, LB 1139, § 41;
Laws 1996, LB 1226, § 25; Laws 2000, LB 1234, § 14.

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

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

(2) The power to establish a program to make loans to municipalities or to counties for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance

Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(3) The power, if so authorized by the council pursuant to section 81-15,152, to execute and deliver documents obligating the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof to the extent permitted by section 81-15,151 to repay, with interest, loans to or deposits into the fund and to execute and deliver documents pledging to the extent permitted by section 81-15,151 all or part of the fund and its assets to secure, directly or indirectly, the loans or deposits;

(4) The duty to prepare an annual report for the Governor and the Legislature containing information which shows the financial status of the program;

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

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

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

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

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

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

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

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

(9) The power to make grants concurrent with loans to municipalities with populations of five thousand inhabitants or less which demonstrate serious financial hardships. The annual obligation to the state shall not exceed five hundred thousand dollars. The department may authorize grants for up to one-half of the eligible project cost. Such state allocations shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

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

(11) The power to make grants for community assessments and facility planning to municipalities with populations of five thousand inhabitants or less which demonstrate serious financial hardships. The annual obligation to the state shall not exceed one hundred fifty thousand dollars. The department may authorize grants for up to ninety percent of the eligible project cost. Such state allocation shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(12) Such other powers as may be necessary and appropriate for the exercise of

the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

Source: Laws 1988, LB 766, § 7; Laws 1989, LB 311, § 11; Laws 1993, LB 3, § 69; Laws 1994, LB 1139, § 42; Laws 1996, LB 1226, § 26; Laws 2000, LB 1234, § 15; Laws 2003, LB 164, § 2.

81-15,154. Categories of loan eligibility; eligible items. Categories of loan eligibility shall include: Secondary or tertiary treatment and appurtenances; infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new intercepters and appurtenances; land integral to the treatment process; correction of combined sewer overflows; and nonpoint source control systems. Loans shall be made only for eligible items within such categories. For loans made entirely from state funds, eligible items shall include, but not be limited to, the costs of engineering services and contracted construction. Eligible items shall not include the costs of water rights, land, easements, and rights-of-way, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal or county administrative costs. For loans made in whole or in part from federal funds, eligible items shall be those identified pursuant to the Clean Water Act.

Source: Laws 1988, LB 766, § 8; Laws 1989, LB 623, § 3; Laws 1994, LB 1139, § 43; Laws 1996, LB 1226, § 27.

81-15,155. Loans to municipalities or counties; conditions. (1) All loans made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities or to counties that:

(a) Meet the requirements of financial capability set by the department;

(b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

(c) Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;

(d) Provide a written assurance, signed by an attorney, that the municipality or county has proper title, easements, and rights-of-way to the property on or through which the wastewater treatment works or nonpoint source control systems is to be constructed or extended;

(e) Require the contractor of the construction project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(f) Provide a written notice of completion and start of operation of the facility; and

(g) Employ a professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services.

(2) Loans made under the act for the construction, rehabilitation, operation, and maintenance of wastewater treatment works shall be made only to municipalities or to counties which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;

(b) Provide capacity for twenty years domestic and industrial growth or reasonable capacity as determined by the department;

(c) Agree to operate and maintain the wastewater treatment works so that it will function properly over the structural and material design life which shall not be less than twenty years; and

(d) Provide a certified operator pursuant to voluntary or mandatory certification program, whichever is in effect.

Source: Laws 1988, LB 766, § 9; Laws 1994, LB 1139, § 44; Laws 1996, LB 1226, § 28; Laws 1997, LB 622, § 125.

81-15,156. Loan terms. Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than twenty years after the date of completion of the project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Source: Laws 1988, LB 766, § 10.

81-15,157. Loans; procedures for granting. Loans shall be granted for projects in accordance with the procedures established through the state's continuing planning process pursuant to sections 205(j), 208, 303(e), and 320 of the Clean Water Act and for projects listed on the state's priority list under section 216 of the Clean Water Act.

Source: Laws 1988, LB 766, § 11.

81-15,158. Municipality or county; failure to make payment; effect. If a municipality or county fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities or counties to which the municipality or county is entitled under sections 77-27,136 to 77-27,137.01. Such amount shall be paid directly to the Wastewater Treatment Facilities Construction Loan Fund.

Source: Laws 1988, LB 766, § 12; Laws 1989, LB 623, § 4; Laws 1994, LB 1139, § 45.

WASTE REDUCTION AND RECYCLING INCENTIVE ACT

81-15,158.01. Act, how cited. Sections 81-15,158.01 to 81-15,165 shall be known and may be cited as the Waste Reduction and Recycling Incentive Act.

Source: Laws 1994, LB 1034, § 4; Laws 1997, LB 495, § 6.

81-15,159. Legislative findings and intent; state purchases; preference requirements. (1) The Legislature hereby finds and declares that:

(a) Some landfills operating with or without a permit in Nebraska exhibit numerous operational and management practices which are inconsistent with proper landfill management and permit requirements, and the owners and operators of such landfills should be encouraged to cooperate and work with the Department of Environmental Quality to ensure that the air, land, and water of this state are not polluted;

(b) Some landfills in Nebraska are reaching capacity and the siting of a new location can be a financially expensive and socially disruptive process, and because of this situation all Nebraska citizens and businesses are encouraged to implement waste reduction measures that will result in a reduction of waste entering landfills by at least twenty-five percent;

(c) Recycling and waste reduction are necessary components of any well-managed waste management system and can extend the lifespan of a landfill and provide alternative waste management options; and

(d) The state can encourage recycling by the example of its own purchase and use of recycled and recyclable materials. The state can also encourage recycling and waste reduction by the creation of funding grants which support existing and future waste management systems.

(2) It is the intent of the Legislature that the state, as a major consumer and an example for others, should assist resource recovery by making a concerted effort to use recyclable and recycled products and encourage other levels of government and the private sector to follow its example. When purchasing products, materials, or supplies for use by the State of Nebraska, the Department of Administrative Services, the University of Nebraska, and any other state agency making such purchases shall give preference to and purchase products, materials, and supplies which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference shall also be given to the purchase of corn-based biodegradable plastics and road deicers, depending on the availability and suitability of such products. Such preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality or substantially higher cost.

Source: Laws 1990, LB 163, § 1; Laws 1992, LB 1257, § 94.

81-15,159.02. Terms, defined. For purposes of the Waste Reduction and Recycling Incentive Act:

(1) Council means the Environmental Quality Council;

(2) Department means the Department of Environmental Quality;

(3) Director means the Director of Environmental Quality;

(4) Scrap tire or waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

(5) Tire means any tire made of rubber or other resilient material and normally used on any vehicle;

(6) Tire-derived product means the usable product produced from a scrap tire. Tire-derived product does not include crumb rubber or chipped tires not intended for a direct end use and does not include baled tires or tire-derived fuel; and

(7) Tire retailer means a person, business, or other entity which engages in the

retail sale of tires in any quantity for any use or purpose by the purchaser other than for resale.

Source: Laws 1994, LB 1034, § 6; Laws 1997, LB 495, § 8; Laws 2003, LB 143, § 10.

81-15,160. Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions. (1) The Waste Reduction and Recycling Incentive Fund is created. The department shall deduct from the fund amounts sufficient to reimburse itself for its costs of administration of the fund. The fund shall be administered by the Department of Environmental Quality. The fund shall consist of proceeds from the fees imposed pursuant to the Waste Reduction and Recycling Incentive Act.

(2) The fund may be used for purposes which include, but are not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs; and

(h) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate combustible waste to generate and recover energy resources, except that no disbursements shall be made under this section for scrap tire processing related to tire-derived fuel.

The State Treasurer shall transfer two million one hundred thousand dollars from the Waste Reduction and Recycling Incentive Fund to the General Fund within five days after August 16, 2002.

(3) Grants up to one million dollars annually shall be available until June 30, 2007, for new scrap tire projects only, if acceptable scrap tire project applications are received. Eligible categories of disbursement under section 81-15,161 may include, but are not limited to:

(a) Reimbursement for the purchase of crumb rubber generated and used in Nebraska, with disbursements not to exceed fifty percent of the cost of the crumb rubber;

(b) Reimbursement for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content, with disbursements not to exceed twenty-five percent of the product's retail cost, except that persons who applied for a grant between June 1, 1999, and May 31, 2001, for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content may apply for reimbursement on or before July 1, 2002. Reimbursement shall not exceed twenty-five

percent of the product's retail cost and may be funded in fiscal years 2001-02 and 2002-03;

(c) Participation in the capital costs of building, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived product, with disbursements not to exceed fifty percent of such costs or five hundred thousand dollars, whichever is less;

(d) Participation in the capital costs of building, equipment, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not to exceed fifty percent of such costs;

(e) Cost-sharing for the manufacturing of tire-derived product, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(f) Cost-sharing for the processing of scrap tires, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; and

(h) Disbursement to a political subdivision up to one hundred percent of costs incurred in cleaning up scrap tire collection and disposal sites.

The director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

(4) Priority for grants made under section 81-15,161 shall be given to grant proposals demonstrating a formal public/private partnership except for grants awarded from fees collected under subsection (6) of section 13-2042.

(5) Grants awarded from fees collected under subsection (6) of section 13-2042 may be renewed for up to a five-year grant period. Such applications shall include an updated integrated solid waste management plan pursuant to section 13-2032. Annual disbursements are subject to available funds and the grantee meeting established grant conditions. Priority for such grants shall be given to grant proposals showing regional participation and programs which address the first integrated solid waste management hierarchy as stated in section 13-2018 which shall include toxicity reduction. Disbursements for any one year shall not exceed fifty percent of the total fees collected after rebates under subsection (6) of section 13-2042 during that year.

(6) Any person who stores waste tires in violation of section 13-2033, which storage is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

(7) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the Waste Reduction and Recycling Incentive Fund. Any money in the fund available for investment shall be invested by the state investment

officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 163, § 2; Laws 1992, LB 1257, § 95; Laws 1993, LB 203, § 20; Laws 1993, LB 444, § 1; Laws 1994, LB 1034, § 7; Laws 1994, LB 1066, § 122; Laws 1997, LB 495, § 9; Laws 1999, LB 592, § 3; Laws 2001, LB 461, § 16; Laws 2002, Second Spec. Sess., LB 1, § 7; Laws 2003, LB 143, § 11.

81-15,161. Waste Reduction and Recycling Incentive Fund; grants; application; contents; director and council; duties; rules and regulations. (1) Allocations from the Waste Reduction and Recycling Incentive Fund may be made as grants to a political subdivision or other entity or organization, public, private, or nonprofit, when it is found that the proposed program, project, or study appears to benefit the general public, to further the goals of waste reduction and recycling, and to be consistent with proper waste management practices. Each application for a grant under the Waste Reduction and Recycling Incentive Act shall be filed with the department in a manner and form prescribed by the department.

(2) The council shall adopt guidelines for the determination of eligibility of public, private, and nonprofit entities, organizations, or persons to receive funds pursuant to the act and for the determination of qualification and suitability of plans submitted by such entities, organizations, and persons consistent with the act.

(3) An application for a grant shall: (a) Describe the nature and purpose of the proposed program, project, or study; (b) set forth or be accompanied by a plan for development of the proposed program, project, or study, together with engineering, economic, and financial feasibility data and information and such estimated costs of construction or implementation as may be required by the department; (c) state whether money other than that for which the application is made will be used to help in meeting program, project, or study costs and whether such money is available or has been sought for this purpose; (d) when appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands; (e) show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or study; and (f) demonstrate the probable environmental and ecological consequences that may result from the proposed program or project. Upon receipt of an application the director shall evaluate and investigate all aspects of the proposed program, project, or study and the proposed schedule for the development and completion of such program, project, or study and determine the eligibility of the program, project, or study for funding. As a part of his or her investigation, the director shall consider whether the plan for development of the program, project, or study is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make recommendations to the applicant which the director considers necessary to make the plan or the application satisfactory.

(4) The director shall within a reasonable time, not to exceed six months, after receipt of such application approve or reject grant funding for the program, project, or study. The grant shall be for a specific dollar amount of funds, and the funds shall be

used only for the purpose specified in the grant. The director may set any terms for the administration of the funds as he or she deems necessary and any penalties to be imposed upon the recipient if it fails to comply with any requirements of the grant.

(5) It is the intent of the Legislature that allocations from the Waste Reduction and Recycling Incentive Fund shall be made in an equitable manner which maximizes the benefits of the fund. When awarding grants, the director shall balance the needs of: (a) All geographic areas of the state; (b) all sizes and classes of communities; and (c) all manner and scale of programs, projects, and studies. The director shall also give consideration to eligible programs, projects, and studies which would specifically employ disabled or handicapped persons.

(6) The director may deny any application which he or she determines (a) is not in conformance with this section, (b) does not reflect reasonable costs for the type of project proposed, (c) contains inaccurate, incomplete, or misleading information in the application, or (d) would require the expenditure of funds beyond the fund's unobligated balance or for any other reason which the director determines is necessary to properly administer this section.

(7) All disbursements made under this section shall be formalized by a written agreement between the department and all recipients of the disbursement. The agreement may include, but need not be limited to, the following conditions designed to protect the fund and ensure completion of the project: (a) Mechanics of funding disbursement; (b) any bidding requirements; (c) completion timelines for any deliverables; (d) record-keeping and reporting requirements; (e) security interest and insurance requirements on equipment; (f) forfeiture and repayment of funds; and (g) other conditions necessary or desirable to carry out this section.

(8) The council shall adopt and promulgate rules and regulations to carry out the Waste Reduction and Recycling Incentive Act.

Source: Laws 1990, LB 163, § 3; Laws 1991, LB 325, § 1; Laws 1993, LB 3, § 70; Laws 1993, LB 444, § 2; Laws 1994, LB 1034, § 8; Laws 1997, LB 495, § 10; Laws 2003, LB 143, § 12.

81-15,162. Fees on tires; collection; disbursement. (1) There is hereby imposed a fee of one dollar on each tire of every new motor vehicle, trailer, or semitrailer sold at retail in this state. Such fee shall be collected by the county treasurer at the time of registration of the motor vehicle, trailer, or semitrailer and remitted to the Department of Revenue.

(2) There is hereby imposed a fee of one dollar on every tire sold at retail in this state, including every farm tractor tire, which tires are not on a motor vehicle, trailer, or semitrailer pursuant to subsection (1) of this section. Such fee shall be collected from the purchaser by the tire retailer at the time of purchase and shall be remitted to the Department of Revenue.

(3) For purposes of this section, tire shall have the definition found in section 81-15,159.02 and shall include a pneumatic and solid tire but shall not include a recapped or regrooved tire.

(4) Subject to section 81-15,165, the fees remitted to the Department of Revenue under this section shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. Fees collected in excess of one million dollars

shall be available for grants to political subdivisions under rules and regulations adopted pursuant to subsection (7) of section 13-2042.

Source: Laws 1990, LB 163, § 4; Laws 1994, LB 1034, § 10; Laws 1999, LB 592, § 4; Laws 2003, LB 143, § 13.

81-15,162.07. Grant recipients; reports required. The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by recipients to ensure that the purposes of the Waste Reduction and Recycling Incentive Act are achieved.

Source: Laws 1994, LB 1034, § 17; Laws 1997, LB 495, § 13.

81-15,163. Annual waste reduction and recycling fee; amount; collection. There is hereby imposed an annual waste reduction and recycling fee of twenty-five dollars on all businesses engaged in business in this state with retail sales of tangible personal property of fifty thousand dollars or more, which sales are subject to the tax imposed by the Nebraska Revenue Act of 1967. For all fee periods beginning on or after July 1, 1999, the twenty-five-dollar fee shall be paid for each business location of such business in this state if the retail sales of tangible personal property for the location are fifty thousand dollars or more. Subject to section 81-15,165, the fee shall be collected by the Department of Revenue and remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund.

Source: Laws 1990, LB 163, § 5; Laws 1993, LB 203, § 21; Laws 1999, LB 59, § 1.

81-15,164. Collection of fees; manner. (1) Except as provided in subsection (2) of this section, the fees imposed by sections 81-15,159 to 81-15,165 shall be collected in the same manner as the sales tax under the Nebraska Revenue Act of 1967, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits under section 81-15,162, and no collection fees shall be allowed any retailer.

(2) The fees imposed by section 81-15,163 shall be collected in the same manner as the litter fee under the Nebraska Litter Reduction and Recycling Act, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.

Source: Laws 1990, LB 163, § 6; Laws 1993, LB 203, § 22; Laws 1994, LB 1034, § 18; Laws 1999, LB 59, § 2.

81-15,165. Tax Commissioner; collection fee; Waste Reduction and Recycling Incentive Fees Collection Fund; created; investment. The Tax Commissioner shall deduct and withhold from the fees collected pursuant to sections 81-15,159 to 81-15,165 a fee sufficient to reimburse himself or herself for the actual cost of collecting and administering such fees and shall credit such collection fee to the Waste Reduction and Recycling Incentive Fees Collection Fund which is hereby created. The Legislature shall appropriate money from the fund to the Department of Revenue to cover the actual costs of the department in administering the Waste Reduction and Recycling

Incentive Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 163, § 7; Laws 1993, LB 203, § 23; Laws 1994, LB 1034, § 19; Laws 1994, LB 1066, § 123.

SOLID WASTE MANAGEMENT PLAN

81-15,166. Comprehensive plan; department; duties; legislative intent; Environmental Quality Council; duties. The Department of Environmental Quality, with the advice and consent of the Environmental Quality Council, shall contract for the preparation of a comprehensive solid waste management plan. Such plan shall be contracted for and prepared on or before December 15, 1991.

It is the intent of the Legislature that in preparation of the plan the state consider the following hierarchy of criteria: (1) Volume reduction at the source; (2) recycling, reuse, and vegetative waste composting; (3) incineration with energy resource recovery; (4) incineration for volume reduction; and (5) land disposal.

It is the intent of the Legislature that the plan be used as a guide to assist political subdivisions in the planning and implementation of their individual, joint, or regional solid waste management systems. The comprehensive solid waste management plan shall not supersede or impair plans, agreements, or contracts initiated by political subdivisions prior to December 15, 1991.

The Environmental Quality Council shall adopt and promulgate rules and regulations for solid waste management options which comply with Environmental Protection Agency rules and guidelines, including rules and guidelines promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments to Subtitle D of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.

Source: Laws 1990, LB 163, § 9; Laws 1991, LB 325, § 2; Laws 1993, LB 3, § 71.

NEBRASKA ENVIRONMENTAL TRUST ACT

81-15,167. Act, how cited. Sections 81-15,167 to 81-15,176 shall be known and may be cited as the Nebraska Environmental Trust Act.

Source: Laws 1992, LB 1257, § 44; Laws 2000, LB 957, § 7; Laws 2002, LB 1003, § 48.

81-15,168. Legislative intent. It is the intent of the Legislature to establish the Nebraska Environmental Trust for the purpose of conserving, enhancing, and restoring the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values. The current and future well-being of the state and its citizens is vitally dependent on a safe and clean environment and requires a dynamic, proactive approach to address environmental needs. The trust shall complement existing governmental and private efforts by encouraging and leveraging the use of private resources on environmental needs with the greatest

potential impact on future environmental quality in Nebraska. The trust shall develop a long-range environmental focus which encompasses the vision of all Nebraskans regarding the future of the environment and shall join public and private efforts in achieving the collective environmental goals of Nebraska's citizens.

Source: Laws 1992, LB 1257, § 45.

81-15,169. Terms, defined. For purposes of the Nebraska Environmental Trust Act:

(1) Board means the Nebraska Environmental Trust Board; and

(2) Trust means the Nebraska Environmental Trust.

Source: Laws 1992, LB 1257, § 46; Laws 2000, LB 957, § 8.

81-15,170. Nebraska Environmental Trust Board; created; membership; qualifications; executive director. The Nebraska Environmental Trust Board is hereby created as an entity of the executive branch. The board shall consist of the Director of Environmental Quality, the Director of Regulation and Licensure, the Director of Natural Resources, the Director of Agriculture, the secretary of the Game and Parks Commission, and nine citizens appointed by the Governor with the approval of a majority of the Legislature. The citizen members shall begin serving immediately following notice of nomination and prior to approval by the Legislature. The citizen members shall represent the general public and shall have demonstrated competence, experience, and interest in the environment of the state. Two of the citizen appointees shall also have experience with private financing of public-purpose projects. Three appointees shall be chosen from each of the three congressional districts. The board shall hire an executive director who shall hire and supervise other staff members as may be authorized by the board. The executive director shall serve at the pleasure of the board and be solely responsible to it. The Game and Parks Commission shall provide administrative support, including, but not limited to, payroll and accounting functions, to the board.

Source: Laws 1992, LB 1257, § 47; Laws 1993, LB 138, § 79;
Laws 1996, LB 1044, § 869; Laws 2000, LB 900, § 248;
Laws 2002, LB 1003, § 49.

81-15,170.01. Board members; conflict of interest; treatment. Members of the board shall comply with the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act. Any member of the board who is also a director of a state agency shall abstain from voting on applications which would provide funding primarily to his or her agency.

Source: Laws 2002, LB 1003, § 50.

81-15,171. Board members; terms; vacancy; expenses. The citizen members of the board shall be appointed for terms of six years, except that of the members first appointed, except directors of agencies, the terms of three shall expire at the end of the second year, three at the end of the fourth year, and three at the end of the sixth year, as designated at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. A vacancy on the board shall exist in the event

of the death, disability, or resignation of a member. All members shall be reimbursed for their actual and necessary travel expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1992, LB 1257, § 48; Laws 1993, LB 138, § 80.

81-15,172. Board; officers; meetings. The board shall annually elect a chairperson from among the citizen members. The board shall meet at least quarterly and may meet more often at the call of the chairperson or the request of any three members.

Source: Laws 1992, LB 1257, § 49.

81-15,173. Board; powers and duties. The board shall have and may exercise the following powers and duties:

(1) Adopt bylaws to govern the proceedings of the board;

(2) Keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act;

(3) Contract with the Game and Parks Commission for administrative support;

(4) Contract with governmental and private agencies to receive services and technical assistance;

(5) Contract with governmental and private agencies to provide services and technical assistance;

(6) Establish environmental categories for use of the funds and develop an appropriate rating system for each category;

(7) Establish ad hoc advisory boards and subcommittees;

(8) Sponsor or assist environmental proposals pertaining to the environmental categories of the board, including issuing grants to agencies, organizations, and persons engaged in the purposes of the trust;

(9) Cooperate with or assist any unit of the state, any political subdivision, or any private, public, or federal agency, foundation, or person in furtherance of the purposes of the trust;

(10) Acquire and dispose of personal property in furtherance of the purposes of the trust; and

(11) Apply for or accept any gift, grant, bequest, royalty, or donation, designate the fund to which it will be credited, and expend the proceeds in furtherance of the purposes of the trust.

Source: Laws 1992, LB 1257, § 50; Laws 2000, LB 957, § 9;
Laws 2004, LB 832, § 1.

81-15,174. Nebraska Environmental Trust Fund; created; use; investment. The Nebraska Environmental Trust Fund is created. The fund shall be maintained in the state accounting system as a cash fund. Except as otherwise provided in this section, the fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act, including the payment of administrative costs. Money in the fund shall include proceeds credited pursuant to section 9-812 and proceeds designated by the board pursuant to section 81-15,173. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer nine hundred twenty-five thousand dollars from the Nebraska Environmental Trust Fund to the Department of Natural Resources Water Issues Cash Fund, as administratively created pursuant to section 81-1111.04, on or after July 1, 2003, but no later than July 10, 2003.

The State Treasurer shall transfer one million dollars from the Nebraska Environmental Trust Fund to the Water Resources Trust Fund on July 1, 2004.

The State Treasurer shall transfer two million seven hundred sixty thousand seven hundred sixty dollars from the Nebraska Environmental Trust Fund to the University of Nebraska Central Administration Designated Cash Fund on March 1, 2007, unless LR 259CA is approved by the voters in the November 2006 general election, then the transfer shall occur on November 15, 2006.

Source: Laws 1992, LB 1257, § 51; Laws 1994, LB 1066, § 124; Laws 2000, LB 957, § 10; Laws 2002, Second Spec. Sess., LB 1, § 8; Laws 2003, LB 408, § 6; Laws 2004, LB 962, § 111; Laws 2006, LB 1061, § 12.

81-15,174.01. Nebraska Environmental Endowment Fund; created; use; investment. The Nebraska Environmental Endowment Fund is created. The fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act. The fund shall include proceeds designated by the board pursuant to section 81-15,173, including grants from the Nebraska Environmental Trust Fund. Grants from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund shall be no more than twice the total of any other proceeds received by the Nebraska Environmental Endowment Fund for the same year. Such grants, considered in the aggregate, shall in no case exceed fifty percent of the total proceeds credited to the Nebraska Environmental Trust Fund pursuant to section 9-812 for that year.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Allocations received by the Nebraska Environmental Endowment Fund from the Nebraska Environmental Trust Fund shall not be reallocated by the board, but shall remain invested. Any interest income earned by the Nebraska Environmental Endowment Fund shall be available for allocation by the board as provided in section 81-15,175.

Source: Laws 2000, LB 957, § 11.

81-15,175. Fund allocations; board; powers and duties. (1) The board may make an annual allocation each fiscal year from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund as provided in section 81-15,174.01. The board shall make annual allocations from the Nebraska Environmental Trust Fund and may make annual allocations each fiscal year from the Nebraska Environmental Endowment Fund for projects which conform to the environmental categories of the board established pursuant to section 81-15,176 and to the extent the board determines those projects to have merit. The board shall establish a calendar annually for receiving and evaluating proposals and awarding grants. To evaluate the economic, financial, and technical feasibility of proposals, the board may establish subcommittees, request or contract for assistance, or establish advisory groups. Private citizens serving on advisory

groups shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(2) The board shall establish rating systems for ranking proposals, which meet the board's environmental categories and other criteria. The rating systems shall include, but not be limited to, the following considerations:

(a) Conformance with categories established pursuant to section 81-15,176;

(b) Amount of funds committed from other funding sources;

(c) Encouragement of public-private partnerships;

(d) Geographic mix of projects over time;

(e) Cost-effectiveness and economic impact;

(f) Direct environmental impact; and

(g) Environmental benefit to the general public and the long-term nature of such public benefit.

(3) The board may establish a subcommittee to rate grant applications. If the board uses a subcommittee, the subcommittee shall (a) use the rating systems established by the board under subsection (2) of this section, (b) assign a numeric value to each rating criterion, combine these values into a total score for each application, and rank the applications by the total scores, (c) recommend an amount of funding for each application, which amount may be more or less than the requested amount, and (d) submit the ranked list and recommended funding to the board for its approval or disapproval. A motion to deviate from the subcommittee's recommendations must specify the reason for doing so and be adopted with an affirmative vote of not fewer than eight members of the board.

(4) The board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. Multiyear commitments may be exempt from the rating process except for the initial application and requests to renew the commitment.

(5) The board shall adopt and promulgate rules and regulations and publish guidelines governing allocations from the fund. The board shall conduct annual reviews of existing projects for compliance with project goals and grant requirements.

(6) Every five years the board may evaluate the long-term effects of the projects it funds. The evaluation may assess a sample of such projects. The board may hire an independent consultant to conduct the evaluation and may report the evaluation findings to the Legislature and the Governor.

Source: Laws 1992, LB 1257, § 52; Laws 1993, LB 138, § 81;
Laws 2000, LB 957, § 12; Laws 2002, LB 1003, § 51;
Laws 2004, LB 832, § 2.

81-15,176. Environmental categories of projects; board; establish grant criteria. (1) Subject to subsection (3) of this section, the board shall establish environmental categories of projects eligible for funding by the trust. The board, after allowing opportunity for public comment, shall designate as categories those environmental goals which most affect the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scenic values.

In designating environmental categories, the board shall attempt to focus on the areas which promise the greatest opportunities for effective action to achieve and preserve the future environmental quality in the state. The board shall establish categories for five-year periods beginning July 1, 1995. The board may establish annual priorities within the five-year categories. The board shall provide for public involvement in developing the categories for such five-year periods and any priorities within these categories, including, but not limited to, public meetings in each of the three congressional districts.

(2) The board shall establish criteria for determining the eligibility of projects for grant assistance, which criteria shall include the following:

(a) The grants shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation;

(b) No more than sixty percent of grant allocations in any year shall assist remediation of soils or ground water, and no grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized;

(c) The grants shall not pay for projects which provide primarily private benefits or relieve private liability for environmental damage;

(d) The grants shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship;

(e) The grants should assist those projects which offer the greatest environmental benefits relative to cost;

(f) The grants should assist those projects which provide clear and direct environmental benefits;

(g) The grants should assist those projects which will make a real contribution to achieving the board's environmental categories;

(h) The grants should assist those projects which offer the greatest public benefits; and

(i) The grants shall not pay for land or easements acquired without the full and express consent of the landowner.

(3) Until the first five-year categories become effective on July 1, 1995, the board shall observe the following categories for allocating grants:

(a) Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species;

(b) Surface water quality, including actions to preserve lakes and streams from degradation;

(c) Ground water quality, including fostering best management practices as defined in section 46-706, actions to preserve ground water from degradation, and remediation of soils or ground water; and

(d) Development of recycling markets and reduction of solid waste volume and toxicity.

(4) The board may refine and clarify these initial categories.

Source: Laws 1992, LB 1257, § 53; Laws 1993, LB 138, § 82; Laws 1994, LB 1207, § 18; Laws 1996, LB 108, § 78; Laws 2000, LB 957, § 13; Laws 2002, LB 1003, § 52; Laws 2004, LB 832, § 3; Laws 2004, LB 962, § 113.

SOLID WASTE LANDFILL CLOSURE ASSISTANCE FUND

81-15,177. Solid Waste Landfill Closure Assistance Fund; established; use; investment; council; grants; duties. (1) There is hereby established the Solid Waste Landfill Closure Assistance Fund which shall be a cash fund administered by the Department of Environmental Quality. The fund shall be used:

(a) To provide grants for landfill site closing assessment, closure, monitoring, and remediation costs related to landfills existing or already closed on July 15, 1992; and

(b) To provide funds to the department for expenses incurred in carrying out its duties under sections 81-15,178 and 81-15,179.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Within five days after February 23, 2002, the State Treasurer shall transfer the balance of the fund to the Low-Level Radioactive Waste Cash Fund.

(2) The Environmental Quality Council shall adopt and promulgate rules and regulations regarding the form and procedure for applications for grants from the fund, procedures for determining claims for payment or reimbursement, procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund, procedures for determining priority among applicants, procedures for auditing persons who have received payments from the fund, and other provisions necessary to carry out sections 81-15,178 and 81-15,179.

Source: Laws 1992, LB 1257, § 54; Laws 1994, LB 1022, § 1; Laws 1994, LB 1066, § 125; Laws 1998, LB 924, § 45; Laws 2002, LB 1101, § 1.

81-15,177.01. Solid Waste Landfill Closure Assistance Fund; applicant, defined. For purposes of sections 81-15,177 to 81-15,179, applicant shall mean any political subdivision which owns or operates or has previously owned or operated a landfill or any entity which owns or operates or has previously owned or operated a licensed landfill in the State of Nebraska.

Source: Laws 1994, LB 1022, § 2.

81-15,178. Funding from Solid Waste Landfill Closure Assistance Fund; applicant; requirements. In order for an applicant to receive funding from the Solid Waste Landfill Closure Assistance Fund, the applicant shall:

(1) Agree to use the funds for landfill site closing assessment, closure, monitoring, or remediation costs relating to landfills existing or already closed on July 15, 1992;

(2) Provide the Department of Environmental Quality with documentation regarding the landfill closure site, including, when appropriate, information indicating that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

(3) Provide a plan for the proposed project, including appropriate engineering, economic, and financial feasibility data and other data and information, including estimated costs, as may be required by the department; and

(4) Demonstrate the anticipated environmental and ecological benefits resulting from the proposed project.

Source: Laws 1992, LB 1257, § 55; Laws 1994, LB 1022, § 3.

81-15,179. Application for funds; department; powers and duties. Upon receipt of an application for funds from the Solid Waste Landfill Closure Assistance Fund, the Department of Environmental Quality shall evaluate and investigate all aspects of the proposed project and the proposed schedule for completion, determine eligibility and priority of the project for funding, and make appropriate grants from the fund pursuant to rules and regulations adopted and promulgated by the Environmental Quality Council. If the department determines that an application is unsatisfactory or does not contain adequate information, the department shall return the application to the applicant and may make recommendations to the applicant which the department considers necessary to make the plan or the application satisfactory.

Source: Laws 1992, LB 1257, § 56.

SUPERFUND COST SHARE CASH FUND

81-15,180. Superfund Cost Share Cash Fund; created; use; investment. The Superfund Cost Share Cash Fund is created. The Department of Environmental Quality shall remit grants and gifts received by the department for purposes of providing cost share for remediation of superfund sites to the State Treasurer for credit to the fund. The department shall administer the Superfund Cost Share Cash Fund to pay for nonfederal costs, including costs for in-kind services, required as cost share for remediation of superfund sites. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer the balance of the Department of Environmental Quality Superfund Cash Fund, administratively created pursuant to section 81-1111.04, to the Superfund Cost Share Cash Fund.

Source: Laws 2005, LB 426, § 3.

REMEDIAL ACTION PLAN MONITORING ACT

81-15,181. Act, how cited. Sections 81-15,181 to 81-15,188 shall be known and may be cited as the Remedial Action Plan Monitoring Act.

Source: Laws 1994, LB 1349, § 1; Laws 2004, LB 449, § 4.

81-15,182. Terms, defined. For purposes of the Remedial Action Plan Monitoring Act:

(1) Land pollution means the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, solid waste, hazardous waste, petroleum, or hazardous substances, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and

animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state; and

(2) Water pollution means the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

Source: Laws 1994, LB 1349, § 2; Laws 2004, LB 449, § 5.

81-15,183. Remedial Action Plan Monitoring Fund; created; use; investment.

(1) The Remedial Action Plan Monitoring Fund is created. The fund shall be administered by the Department of Environmental Quality. Revenue from the following sources shall be credited to the fund:

(a) Application fees collected under the Remedial Action Plan Monitoring Act;

(b) Deposits for costs associated with administration of the act, including review, oversight, and guidance;

(c) Gifts, grants, reimbursements, or appropriations from any source intended to be used for purposes of the act; and

(d) Investment interest attributable to the fund.

(2) The fund shall be used by the department to:

(a) Review applications and provide technical review, oversight, guidance, and other activities associated with remedial action plans for land pollution or water pollution;

(b) Fund activities performed by the department to address immediate or emergency threats to human health and the environment related to property under the act; and

(c) Administer and enforce the act.

(3) Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 1349, § 3; Laws 1995, LB 7, § 130;
Laws 2004, LB 449, § 6.

81-15,184. Remedial action plan; application for monitoring; requirements; fees; department; duties. (1) Any entity which voluntarily chooses to make application for monitoring of remedial action plans for property where land pollution or water pollution exists shall:

(a) Submit an application on a form approved by the Department of Environmental Quality;

(b) Provide the department with a nonrefundable application fee of five thousand dollars; and

(c) Execute a written agreement to provide reimbursement of all department direct and indirect costs related to technical review, oversight, guidance, and other activities associated with the remedial action plan. As part of the voluntary agreement, the department shall require the applicant to post a deposit of five thousand dollars to be used by the department to cover all costs. The department shall not commence technical review, oversight, guidance, or other activities associated with the remedial action plan until the voluntary agreement is executed and a complete remedial action plan has been submitted. If the costs of the department exceed the initial deposit, an additional amount agreed upon by the department and the applicant may be required prior to proceeding.

After the mutual termination of the voluntary agreement, any balance of funds paid under this subdivision shall be refunded.

(2) The department shall review and approve or deny all applications and notify the applicant in writing. If the application is denied, the notification shall state the reason for the denial. If the department determines that an application does not contain adequate information, the department shall return the application to the applicant. The applicant has sixty days to resubmit the required information or the application will be deemed denied.

(3) Within ninety days of approval of the application, the applicant shall provide a complete remedial action plan for the proposed project that conforms to all federal and state environmental standards and substantive requirements, including:

(a) Documentation regarding the investigation of land pollution or water pollution including, when appropriate, information indicating that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

(b) A remedial action work plan which describes the remedial action measures to be taken to address the land or water pollution; and

(c) Project monitoring reports, appropriate engineering, scientific, and financial feasibility data, and other data and information as may be required by the department.

Source: Laws 1994, LB 1349, § 4; Laws 2004, LB 449, § 8.

81-15,185. Department of Environmental Quality; remedial action plan; approval or disapproval; notification. Upon receipt of a voluntary remedial action plan for land pollution or water pollution pursuant to section 81-15,184, the Department of Environmental Quality shall review and approve or disapprove the plan and notify the applicant in writing. If the plan is disapproved, the notification shall state the reason for the disapproval and provide a reasonable opportunity to resubmit the plan.

Source: Laws 1994, LB 1349, § 5; Laws 2004, LB 449, § 9.

81-15,185.01. Remedial action plan; notice; hearing. The Department of Environmental Quality shall issue public notice of its intent to approve a voluntary remedial action plan pursuant to section 81-15,185 in a local newspaper of general circulation in the area affected and make the remedial action plan available to the public. The public shall have thirty days from the date of publication during which any person may submit written comments to the department regarding the proposed remedial action. Such person may also request or petition the Director of Environmental Quality, in writing, for a hearing and state the nature of the issues to be raised. The director shall hold a public hearing if the comments, request, or petition raise legal, policy, or discretionary questions of general application and significant public interest exists.

Source: Laws 2004, LB 449, § 10.

81-15,185.02. Remedial action plan; termination; notification. (1) The applicant may unilaterally terminate a voluntary remedial action plan approved pursuant to section 81-15,185 prior to completion of investigative and remedial activities if the applicant leaves the property in no worse condition, from a human health and environment

perspective, than when the applicant initiated voluntary remedial action and the applicant reimburses the Department of Environmental Quality for all outstanding costs.

(2) The department may terminate a voluntary remedial action plan if the applicant:

(a) Violates any terms or conditions of the plan or fails to fulfill any obligations of the plan, including submission of an acceptable remedial action plan within a reasonable period of time;

(b) Fails to address an immediate and significant risk of harm to public health and the environment in a timely and effective manner; or

(c) Fails to initiate the plan within six months after approval by the department or to complete the plan within twenty-four months after approval by the department, excluding long-term operation, maintenance, and monitoring, unless the department grants an extension of time.

(3) The department shall notify the applicant in writing of the intention to terminate the voluntary remedial action plan and include the reason for the termination and a summary of any unreimbursed costs of the department that are due.

Source: Laws 2004, LB 449, § 11.

81-15,185.03. Remedial action plan; completion; duties; enforceability. (1) Within sixty days after completion of a voluntary remedial action plan approved pursuant to section 81-15,185, the applicant shall provide the Department of Environmental Quality with a final remedial action report and assurance that the plan has been fully implemented. Department approval of a voluntary remedial action plan shall be void upon failure to comply with the approved plan or willful submission of false, inaccurate, or misleading information by the applicant.

(2) Voluntary remedial action plans approved under section 81-15,185 are not enforceable unless the department can demonstrate that the applicant has failed to fully implement the approved plan. The department may require further action if such action is authorized by other state statutes administered by the department.

Source: Laws 2004, LB 449, § 12.

81-15,186. Department of Environmental Quality; issuance of letter; contents. If the requirements of the Remedial Action Plan Monitoring Act are met and the applicant has remitted all applicable fees, the Department of Environmental Quality may issue to the applicant a letter stating that no further action need be taken at the site related to any contamination for which remedial action has been taken in accordance with the approved remedial action plan. Such letter shall provide that the department may require the person to conduct additional remedial action in the event that any monitoring conducted at or near the real property or other circumstances indicate that (1) contamination is reoccurring, (2) additional contamination is present which was not identified pursuant to section 81-15,184, or (3) additional contamination is present for which remedial action was not taken according to the remedial action plan. As a condition of issuance, the department may require payment of ongoing direct and indirect costs of oversight of any ongoing long-term operation, maintenance, and monitoring.

Source: Laws 1994, LB 1349, § 6; Laws 2004, LB 449, § 13.

81-15,186.01. Rules and regulations. The Environmental Quality Council may adopt and promulgate rules and regulations necessary to administer and enforce the provisions of the Remedial Action Plan Monitoring Act.

Source: Laws 2004, LB 449, § 7.

81-15,187. Act, how construed; indemnification. The Remedial Action Plan Monitoring Act shall not be construed as an acceptance of liability by the State of Nebraska for activities conducted pursuant to such act. Entities proceeding under such act shall indemnify and hold harmless the State of Nebraska for any further action required by the federal Environmental Protection Agency relating to land pollution or water pollution by an entity.

Source: Laws 1994, LB 1349, § 7.

81-15,188. Act; supplemental to other laws; how construed. The powers conferred by the Remedial Action Plan Monitoring Act shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby, and the act shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

Source: Laws 1994, LB 1349, § 8.

TECHNICAL ADVISORY COMMITTEE

81-15,189. Technical advisory committee; members; qualifications; expenses. In order to implement the Petroleum Products and Hazardous Substances Storage and Handling Act and the Petroleum Release Remedial Action Act, the Director of Environmental Quality shall appoint a technical advisory committee to work with the Department of Environmental Quality. The duties of the committee are advisory only. Committee members shall include, but not be limited to:

(1) The Director of Environmental Quality or his or her designee;

(2) The State Fire Marshal or his or her designee;

(3) The executive director of the Nebraska Petroleum Marketers and Convenience Store Association or his or her designee;

(4) The executive director of the League of Nebraska Municipalities or his or her designee;

(5) The executive director of the Nebraska Association of County Officials or his or her designee;

(6) The executive director of the Nebraska Petroleum Council or his or her designee;

(7) The executive director of the American Consulting Engineers Council of Nebraska or his or her designee;

(8) The executive director of the Nebraska Chamber of Commerce and Industry or his or her designee;

(9) The executive director of the Associated Builders and Contractors or his or her designee;

(10) The executive director of the Nebraska Cooperative Council or his or her designee;

(11) A representative of the Department of Health and Human Services or a representative of the Department of Health and Human Services Regulation and Licensure; and

(12) A member of the public representing environmental interests.

Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1996, LB 1226, § 19; Laws 1998, LB 1161, § 47.

81-15,190. Technical advisory committee; duties; termination. (1) The technical advisory committee created in section 81-15,189 shall meet at least once each quarter of the calendar year, as determined by the Department of Environmental Quality.

(2) The technical advisory committee shall:

(a) Annually review and make recommendations to the department on the current schedule of reasonable rates made available to the public by the department under section 66-1518;

(b) Review summaries of reimbursement determinations;

(c) Review and make recommendations to the department on the guidelines for pay-for-performance programs or any other innovative contracting methods;

(d) Review and make recommendations to the department on the department's audit programs in conjunction with the Petroleum Release Remedial Action Act;

(e) Review and make recommendations to the department on any other activities under the Petroleum Release Remedial Action Act and the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(f) Take into account risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety and the environment using, to the extent appropriate, a tiered approach consistent with the American Society for Testing of Materials guidance for risk-based corrective action as applied at petroleum release sites.

(3) The technical advisory committee shall cease to exist on March 1, 2002.

Source: Laws 1996, LB 1226, § 20; Laws 1998, LB 1161, § 48.

NEBRASKA EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW ACT

81-15,191. Act, how cited. Sections 81-15,191 to 81-15,235 shall be known and may be cited as the Nebraska Emergency Planning and Community Right to Know Act.

Source: Laws 1997, LB 374, § 1.

81-15,192. Legislative intent. (1) It is the intent of the Legislature to adopt the Nebraska Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

(2) The Legislature finds that the release of hazardous and toxic chemicals threatens the health and safety of the public and the environment. The Legislature further finds that increased public knowledge and access to information on the presence of hazardous and toxic chemicals in communities enables the public to work with facilities, communities, state and federal agencies, and governmental bodies to improve

chemical safety and protect the health and safety of the public and the environment. The Legislature further finds that the community's right to know is essential in protecting the health and safety of the public and the environment. The Legislature further finds that emergency planning and notification requirements assist the state and local communities in planning for and responding to a release of extremely hazardous substances.

(3) It is the intent of the Legislature that all state agencies involved in emergency release notification, reporting, planning, training, response, and preparedness will coordinate and collaborate in carrying out the purposes of the Nebraska Emergency Planning and Community Right to Know Act and may, to the extent possible, share resources and funding.

(4) It is the intent of the Legislature that the reporting requirements of the Nebraska Emergency Planning and Community Right to Know Act are to be no more stringent than the reporting requirements of the Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

Source: Laws 1997, LB 374, § 2.

81-15,193. Definitions, where found. For purposes of the Nebraska Emergency Planning and Community Right to Know Act, the definitions found in sections 81-15,194 to 81-15,209 apply.

Source: Laws 1997, LB 374, § 3.

81-15,194. Administrator, defined. Administrator means the Administrator of the United States Environmental Protection Agency.

Source: Laws 1997, LB 374, § 4.

81-15,195. Commission, defined. Commission means the State Emergency Response Commission.

Source: Laws 1997, LB 374, § 5.

81-15,196. Director, defined. Director means the Director of Environmental Quality.

Source: Laws 1997, LB 374, § 6.

81-15,197. Environment, defined. Environment includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

Source: Laws 1997, LB 374, § 7.

81-15,198. Extremely hazardous substance, defined. Extremely hazardous substance means a substance which meets the threshold requirements identified on the List of Extremely Hazardous Substances under 40 C.F.R. part 355, Appendices A and B.

Source: Laws 1997, LB 374, § 8.

81-15,199. Facility, defined. Facility means the buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites and

owned or operated by the same person or by any person which controls, is controlled by, or is under common control with such person.

Source: Laws 1997, LB 374, § 9.

81-15,200. Governing body, defined. Governing body means the governing body of a village, city, or county.

Source: Laws 1997, LB 374, § 10.

81-15,201. Hazardous chemical, defined. Hazardous chemical has the same meaning as in 29 C.F.R. 1910.1200(c).

Source: Laws 1997, LB 374, § 11.

81-15,202. Hazardous substance, defined. Hazardous substance has the same meaning as in 40 C.F.R. part 302, Table 302.4.

Source: Laws 1997, LB 374, § 12.

81-15,203. Inventory form, defined. Inventory form means an emergency and hazardous chemical inventory form required to be prepared by an owner or operator of any facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq.

Source: Laws 1997, LB 374, § 13.

81-15,204. List of chemicals, defined. List of chemicals includes each of the following:

(1) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act, grouped in categories of health and physical hazards as set forth under the act and regulations promulgated under the act or in such other categories as prescribed under section 311 of Title III;

(2) The chemical name or the common name of each such chemical as provided on the material safety data sheet; and

(3) Any hazardous component of each such chemical as provided on the material safety data sheet.

Source: Laws 1997, LB 374, § 14.

81-15,205. Material safety data sheet, defined. Material safety data sheet means the sheet required to be developed under 29 C.F.R. 1910.1200(g).

Source: Laws 1997, LB 374, § 15.

81-15,206. Release, defined. Release means to spill, leak, pump, pour, emit, empty, discharge, inject, escape, leach, dump, or dispose any hazardous chemical, extremely hazardous substance, or toxic chemical into the environment and includes the abandonment or discarding of barrels, containers, and other closed receptacles containing any such chemical or substance.

Source: Laws 1997, LB 374, § 16.

81-15,207. State Administrator, defined. State Administrator means the director of the Nebraska Emergency Management Agency.

Source: Laws 1997, LB 374, § 17.

81-15,208. Title III, defined. Title III means the Emergency Planning and Community Right to Know Act pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, as amended.

Source: Laws 1997, LB 374, § 18.

81-15,209. Toxic chemical, defined. Toxic chemical means a substance on the list in Committee Print Number 99-169, as amended, of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986", including any revised version as may be made pursuant to section 313 of Title III.

Source: Laws 1997, LB 374, § 19.

81-15,210. State Administrator; State Emergency Response Commission; created; members; terms. (1) The director of the Nebraska Emergency Management Agency shall serve as the State Administrator of the Nebraska Emergency Planning and Community Right to Know Act. The State Emergency Response Commission is created and shall be a part of the Nebraska Emergency Management Agency for administrative purposes. The membership of the commission shall include the Director of Environmental Quality or his or her designee, the Director of Health and Human Services Regulation and Licensure or his or her designee, the Director-State Engineer or his or her designee, the Superintendent of Law Enforcement and Public Safety or his or her designee, the State Fire Marshal or his or her designee, the director of the Nebraska Emergency Management Agency or his or her designee, two elected officials or employees of municipal or county government, and one citizen member to represent each of the following interest groups: Firefighters, local emergency management, public or community health, environmental protection, labor, school district, small business, agricultural business, chemical industry, highway transportation, and rail transportation. The Governor shall appoint the municipal or county government officials or employees and the citizen members with the approval of the Legislature. The appointments shall be made to represent the three congressional districts as equally as possible.

(2) The members appointed by the Governor shall be appointed for terms of four years, except that of the first citizen members appointed, three members shall serve for one-year terms, three members shall serve for two-year terms, and two members shall serve for three-year terms, as designated at the time of appointment.

(3) A vacancy on the commission shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed by the Governor for the remainder of such term.

Source: Laws 1997, LB 374, § 20.

81-15,211. Chairperson; meetings; expenses. (1) The commission shall annually elect a chairperson from among its citizen members. The commission shall meet

at least twice each year and may meet more often at the call of the chairperson or at the request of any three members.

(2) All members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1997, LB 374, § 21.

81-15,212. Commission; duties; emergency planning districts. (1) The commission shall:

(a) Appoint local emergency planning committees pursuant to section 81-15,215; and

(b) Supervise and coordinate the activities of the local emergency planning committees.

(2) The commission shall designate each county or, where appropriate, multiple counties as emergency planning districts in order to facilitate preparation and implementation of emergency plans.

Source: Laws 1997, LB 374, § 22.

81-15,213. Nebraska Emergency Management Agency; Department of Environmental Quality; duties. (1) The Nebraska Emergency Management Agency shall supervise and coordinate emergency planning and training under section 305 of Title III and shall oversee and distribute all funds received under section 305 of Title III and section 81-15,214.

(2) The Department of Environmental Quality shall receive emergency notification and facility reports and establish procedures for receiving and processing requests from the public for information as required to be provided under the Nebraska Emergency Planning and Community Right to Know Act. The director or his or her designee shall serve as commission coordinator for information.

Source: Laws 1997, LB 374, § 23.

81-15,214. Nebraska Emergency Planning and Community Right to Know Cash Fund; created; use; investment. (1) There is hereby created the Nebraska Emergency Planning and Community Right to Know Cash Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Nebraska Emergency Planning and Community Right to Know Act, including:

(a) The funding of specific projects as approved by the commission; and

(b) The payment of expenses incurred by the commission to administer the fund. Payment from the fund for costs of administering the fund shall not exceed fifteen percent of the total receipts of the fund during the fiscal year. The commission shall adopt and promulgate rules and regulations governing allocations from the fund and shall publish guidelines regarding allocations from the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Entities receiving allocations from the Nebraska Emergency Planning and Community Right to Know Cash Fund shall expend the allocation in a manner expressly approved by the commission. If allocations from the fund are used for purposes other

than those approved by the commission, the commission may recover by appropriate legal means any funds spent inconsistent with the terms of the allocation. Any recovered funds shall be deposited in the fund.

Source: Laws 1997, LB 374, § 24.

81-15,215. Local emergency planning committee; members; terms. The commission shall appoint the members of each local emergency planning committee for each emergency-planning district established after September 13, 1997. Only one local emergency planning committee shall be established in each district. To the extent possible, each committee established prior to, on, or after September 13, 1997, shall include at a minimum a representative from each of the following interest groups: State and local elected officials, public health, local environmental protection, hospitals, firefighters, local emergency management, law enforcement, transportation, broadcast and print media, neighborhood and community organizations, and owners and operators of facilities which are subject to the requirements of the Nebraska Emergency Planning and Community Right to Know Act. The committee members shall be appointed for terms of two years, except that of the initial appointees, approximately one-half of the members shall serve for terms of one year as designated at the time of appointment. A vacancy on a committee shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

Source: Laws 1997, LB 374, § 25.

81-15,216. Local emergency planning committee; chairperson; meetings. Each local emergency planning committee shall annually elect a chairperson. Each committee shall meet at least annually and may meet more often at the call of the chairperson or at the request of any three members.

Source: Laws 1997, LB 374, § 26.

81-15,217. Local emergency planning committee; powers and duties. (1) Each local emergency planning committee shall:

(a) Establish rules governing the functioning of the committee consistent with the Open Meetings Act and sections 84-712 to 84-712.09. The rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan required under subdivision (c) of this subsection, public comments, response to such comments by the committee, and distribution of the emergency plan;

(b) Establish procedures for receiving and processing requests from the public for information required to be provided under the Nebraska Emergency Planning and Community Right to Know Act. The procedures shall include provisions to inform members of the public of the right to bring an action under federal law to enforce the act. The procedures shall include the designation of an official to serve as coordinator for information;

(c) Complete preparation of an emergency plan in accordance with the act not later than January 1, 1998, unless a plan for the emergency planning district has previously been submitted and approved by the commission. The committee shall review

and update the plan once a year beginning March 1, 1999, and each March 1 thereafter, or more frequently as changed circumstances in the community or at any facility may require;

(d) Evaluate the need for resources necessary to develop, implement, and exercise the emergency plan and make recommendations with respect to additional resources that may be required and the means for providing such additional resources; and

(e) Designate a public library in each county within its district as a depository for the emergency plan, deliver the plan to the designated library, and update the plan as necessary.

(2) Each local emergency planning committee may receive gifts, bequests, grants, or other contributions or donations from public or private sources to carry out its duties and the purposes of the act, including, but not limited to, administrative costs and reimbursement to committee members for their actual and necessary travel expenses. Any gifts, bequests, grants, or other contributions or donations received from public or private sources shall be accounted for in an annual report to the commission. The commission shall adopt and promulgate rules and regulations governing the receipt and use of any gifts, bequests, grants, or other contributions or donations from public or private sources.

Source: Laws 1997, LB 374, § 27; Laws 2004, LB 821, § 32.

81-15,218. Facility; notifications required. (1) The owner or operator of each facility in which an extremely hazardous substance exceeding threshold planning quantities is present shall notify the commission that such facility is subject to the Nebraska Emergency Planning and Community Right to Know Act within sixty days after September 13, 1997, unless notification was made prior to September 13, 1997, and shall notify the commission and the local emergency planning committee of the emergency planning district in which the facility is located that such facility is subject to the act within sixty days after an extremely hazardous substance first becomes present at such facility in excess of the threshold planning quantity established for such substance. If there is a revision of the definition of extremely hazardous substances and the facility has present a substance included in the revised definition in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the commission and the committee of the district in which the facility is located within sixty days after such revision that such facility is subject to the act.

(2) The commission shall notify the director and the State Administrator of facilities subject to the act. The notification shall include:

(a) Each notification received from a facility under subsection (1) of this section; and

(b) Each facility designated by the commission under subsection (3) of this section.

(3) For purposes of emergency planning, the commission may designate additional facilities which are subject to the act if such designation is made after public notice and opportunity for comment. The commission shall notify the facility concerned of any designation under this subsection.

Source: Laws 1997, LB 374, § 28.

81-15,219. Facility emergency coordinator. Within thirty days after the establishment of a committee for the emergency planning district in which a reporting facility is located, the owner or operator of the facility shall provide to the committee the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator. The owner or operator of the facility shall promptly inform the committee of any relevant changes occurring at the facility as changes occur or are expected to occur. Upon request from the committee, the owner or operator of the facility shall promptly provide information to the committee which is necessary for developing and implementing the emergency plan.

Source: Laws 1997, LB 374, § 29.

81-15,220. Emergency plan; contents. Each emergency plan as required in subdivision (1)(c) of section 81-15,217 shall include, but not be limited to, the following:

(1) Identification of facilities containing an extremely hazardous substance in an amount which exceeds the threshold planning quantity established for such substance that are within the emergency planning district, identification of routes likely to be used for the transportation of extremely hazardous substances, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this section;

(2) Methods and procedures to be followed by facility owners and operators and local emergency response and medical personnel to respond to any release of extremely hazardous substances;

(3) Designation of a community emergency coordinator and identification of facility emergency coordinators who will make determinations necessary to implement the plan;

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan and to the public that a release has occurred. Notification procedures shall be consistent with the notification requirements of section 81-15,222;

(5) Methods for determining the occurrence of a release and the area or population likely to be affected by the release;

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the Nebraska Emergency Planning and Community Right to Know Act and an identification of the persons responsible for the equipment and facilities;

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes;

(8) Training programs, including schedules for training of local emergency response and medical personnel; and

(9) Methods and schedules for exercising the emergency plan.

Source: Laws 1997, LB 374, § 30.

81-15,221. Emergency plan review. Each local emergency planning committee shall provide the emergency plan to the governing bodies having jurisdiction in the emergency planning district for review prior to submitting the plan to the commission. The commission shall review the plan and make recommendations to the committee on

revisions to the plan that may be necessary to ensure coordination of the plan with emergency plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of the plan.

Source: Laws 1997, LB 374, § 31.

81-15,222. Release notification. (1) An owner or operator of a facility shall immediately provide notice as described in subsection (2) of this section if:

(a) A release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601. et seq.;

(b) A release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored and such release is not subject to the notification requirements under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but only if the release:

(i) Is not a federally permitted release as defined in section 101(10) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;

(ii) Is in an amount in excess of a quantity which the administrator has determined by regulation requires notice; and

(iii) Occurs in a manner which would require notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; or

(c) A release of a substance which is not an extremely hazardous substance occurs at a facility at which a hazardous chemical is produced, used, or stored and such release requires notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(2) Notice shall be given immediately after the release by the owner or operator of the facility by such means as telephone or radio or in person to the commission coordinator for information and to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section or storage incident to such transportation, the notice shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.

(3) Notice required under this section shall include each of the following to the extent known at the time of the notice and so long as no delay in responding to the emergency results:

(a) The chemical name or identity of any substance involved in the release;

(b) An indication of whether the substance is an extremely hazardous substance;

(c) An estimate of the quantity of any such substance that was released into the environment;

(d) The time and duration of the release;

(e) The medium or media into which the release occurred;

(f) Any known or anticipated acute or chronic health risks associated with the emergency and, if appropriate, advice regarding medical attention necessary for exposed individuals;

(g) Proper precautions to take as a result of the release, including evacuation, unless such information is readily available to the community emergency coordinator pursuant to the emergency plan; and

(h) The name and telephone number of the person or persons to be contacted for further information.

(4) As soon as practicable after a release which requires notice and as more information becomes available, such owner or operator shall provide a written followup emergency notice or notices setting forth and updating the information required under subsection (3) of this section and including additional information with respect to:

(a) Actions taken to respond to and contain the release;

(b) Any known or anticipated acute or chronic health risks associated with the release; and

(c) If appropriate, advice regarding medical attention necessary for exposed individuals.

(5) This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located. The exemption provided in section 81-15,227 relating to transportation does not apply to this section.

(6) For purposes of this section, facility also includes motor vehicles, rolling stock, and aircraft.

Source: Laws 1997, LB 374, § 32.

81-15,223. Material safety data sheet. (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act shall submit a material safety data sheet for each such chemical meeting threshold quantity requirements under regulations promulgated under Title III or shall submit a list of chemicals to:

(a) The local emergency planning committee for the emergency-planning district in which the facility is located;

(b) The commission coordinator for information; and

(c) The fire department with jurisdiction over the facility.

(2) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(a) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary; or

(b) Submitting a material safety data sheet for the mixture itself or identifying the mixture on a list of chemicals.

(3) Each owner or operator of a facility submitting a list of chemicals under subsection (1) of this section shall, upon request by the committee, submit the material safety data sheet for any chemical on the list to the committee.

(4) A committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section 81-15,229. If the committee does not have the requested material safety data sheet, the committee shall request the

sheet from the facility owner or operator and then make the sheet available to the person in accordance with section 81-15,229.

(5) Unless provided prior to September 13, 1997, the initial material safety data sheet or list of chemicals required under this section with respect to a hazardous chemical shall be provided before the later of:

(a) January 1, 1998; or

(b) Three months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., and regulations promulgated under the act.

(6) Within three months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the committee under subsection (1) of this section, a revised sheet shall be provided to the committee.

(7) For purposes of this section, hazardous chemical does not include:

(a) Any food, food additive, color additive, drug, or cosmetic regulated by the federal Food and Drug Administration;

(b) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use;

(c) Any substance to the extent it is used for personal, family, or household purposes or is present in the same form and concentration as a product packaged for distribution and use by the general public;

(d) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual; or

(e) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate consumer.

Source: Laws 1997, LB 374, § 33.

81-15,224. Tier II inventory form. (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical meeting threshold quantity requirements under regulations promulgated under Title III shall prepare and submit annually on or before March 1 beginning in 1998 a tier II inventory form on data for the preceding calendar year to:

(a) The local emergency planning committee for the emergency-planning district in which the facility is located;

(b) The commission coordinator for information; and

(c) The fire department with jurisdiction over the facility.

(2) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

(a) Providing information on the tier II inventory form on each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the tier II inventory form for the element or compound at the facility is necessary; or

(b) Providing information on the tier II inventory form on the mixture itself.

(3) A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a list of chemicals is required under section 81-15,223.

(4) A tier II inventory form shall provide the following information for each hazardous chemical present at the facility:

(a) The chemical name or the common name of the chemical as provided on the material safety data sheet;

(b) An estimate in ranges of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year;

(c) An estimate in ranges of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year;

(d) A brief description of the manner of storage of the hazardous chemical;

(e) The location at the facility of the hazardous chemical; and

(f) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section 81-15,229.

(5) Upon request by the commission, the director, a committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (4) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

(6) A state or local official acting in his or her official capacity may have access to tier II information by submitting a request to the commission or a committee. Upon receipt of a request for tier II information, the commission or committee shall request such information from the facility owner or operator and make such information available to the official.

(7) Any person may make request to the commission, the director, or a committee for tier II information relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

(8) Any tier II information which the commission, the director, or a committee has in its possession shall be made available to a person making a request under this section in accordance with section 81-15,229. If the commission, director, or committee does not have the tier II information in its possession, upon a request for the information the commission, director, or committee shall request the facility owner or operator for the information with respect to a hazardous chemical which a facility has stored in an amount in excess of ten thousand pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 81-15,229 to the person making the request.

(9) In the case of tier II information which is not in the possession of the commission, the director, or a committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than ten thousand pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The commission, director, or committee may request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the commission, director, or committee shall make the information available to the person in accordance with section 81-15,229.

(10) The commission, the director, or a committee shall respond to a request for tier II information under this section no later than forty-five days after the date of receipt of the request.

(11) An owner or operator of a facility which files an inventory form under this section shall, upon request by the fire department with jurisdiction over the facility, allow the fire department to conduct an onsite inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.

Source: Laws 1997, LB 374, § 34.

81-15,225. Toxic chemical release form. (1) The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under section 313(g) of Title III for each toxic chemical that was manufactured, processed, or otherwise used in quantities exceeding the toxic chemical threshold quantity established by subsection (2) of this section during the preceding calendar year at such facility. The form shall be submitted to the director annually on July 1 and shall contain data reflecting releases during the preceding calendar year.

(2) The requirements of this section apply to owners and operators of facilities that are required to file reports under section 313 of Title III and rules and regulations promulgated thereunder.

Source: Laws 1997, LB 374, § 35.

81-15,226. Owner or operator; information to health professionals; confidentiality. (1) An owner or operator of a facility which is subject to the requirements of section 81-15,223, 81-15,224, or 81-15,225 and the requirements of Title III shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (5) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that:

(a) The information is needed for purposes of diagnosis or treatment of an individual;

(b) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned; and

(c) Knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III when such information is a trade secret shall not apply to information required to be provided under this subsection subject to subsection (5) of this section.

(2) An owner or operator of a facility which is subject to the requirements of section 81-15,223, 81-15,224, or 81-15,225 and Title III shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous

substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines:

(a) A medical emergency exists;

(b) The specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment; and

(c) The individual or individuals being diagnosed or treated have been exposed to the chemical concerned.

Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III regarding trade secrets from a material safety data sheet, an inventory form, or a toxic chemical release form shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (5) of this section and a statement setting forth the items listed in subdivisions (2)(a) through (2)(c) of this section as soon as circumstances permit.

(3) An owner or operator of a facility which is subject to the requirements of section 81-15,223, 81-15,224, or 81-15,225 and Title III shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional:

(a) Who is a local or state government employee or a person under contract with the local or state government; and

(b) Who requests such information in writing and provides a written statement of need under subsection (4) of this section and a written confidentiality agreement under subsection (5) of this section.

Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local or state health professional. The authority to withhold the specific chemical identity of a chemical under section 322 of Title III when such information is a trade secret shall not apply to information required to be provided under this subsection subject to subsection (5) of this section.

(4) The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:

(a) To assess exposure of persons living in a local community to the hazards of the chemical concerned;

(b) To conduct or assess sampling to determine exposure levels of various population groups;

(c) To conduct periodic medical surveillance of exposed population groups;

(d) To provide medical treatment to exposed individuals or population groups;

(e) To conduct studies to determine the health effects of exposure; and

(f) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.

(5) Any person obtaining information under subsection (1) or (3) of this section shall be required to agree in a written confidentiality agreement that he or she will not use

the information for any purpose other than the health needs asserted in the statement of need except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.

Source: Laws 1997, LB 374, § 36.

81-15,227. Exemption for transportation. Except as provided in section 81-15,222, the Nebraska Emergency Planning and Community Right to Know Act does not apply to the transportation, including the storage incident to such transportation, of any substance or chemical subject to the requirements of the act, including the transportation and distribution of natural gas.

Source: Laws 1997, LB 374, § 37.

81-15,228. Local law; applicability. (1) Nothing in the Nebraska Emergency Planning and Community Right to Know Act shall:

(a) Preempt any local law;

(b) Except as provided in subsection (2) of this section, otherwise affect any local law or the authority of any local government to adopt or enforce any local law; and

(c) Affect or modify in any way the obligations or liabilities of any person under other state or federal law.

(2) Any local law enacted after September 13, 1997, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under section 81-15,223. In addition, a locality may require the submission of information which is supplemental to the information required on the data sheet, including information on the location and quantity of hazardous chemicals present at the facility, through additional sheets attached to the data sheet or such other means as the locality considers appropriate.

Source: Laws 1997, LB 374, § 38.

81-15,229. Inspection of information; publication of notice. (1) Each emergency plan, material safety data sheet, list of chemicals, inventory form, toxic chemical release form, and followup emergency notice shall be made available to the general public, consistent with section 322 of Title III, during normal working hours at the location or locations designated by the Department of Environmental Quality, the commission, or a local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section 81-15,224, the Department of Environmental Quality, the commission, or the appropriate committee shall withhold from disclosure under this section the location of any specific chemical required by section 81-15,225 to be contained in an inventory form as tier II information.

(2) Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that followup

emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or followup notice may do so at the location designated under subsection (1) of this section.

Source: Laws 1997, LB 374, § 39.

81-15,230. Violations; civil actions. (1) Any state or local government may commence a civil action against an owner or operator of a facility for failure to:

(a) Provide notification to the commission under subsection (1) of section 81-15,218;

(b) Submit a material safety data sheet or a list of chemicals under section 81-15,223;

(c) Make available information requested under subsections (3) and (4) of section 81-15,223; and

(d) Complete and submit a tier II inventory form under section 81-15,224.

(2) The commission, the director, or a local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section 81-15,219 or for failure to submit tier II information under subsection (5) of section 81-15,224.

(3) The state may commence a civil action against the administrator for failure to provide information to the state under section 322(g) of Title III.

Source: Laws 1997, LB 374, § 40.

81-15,231. Civil action; jurisdiction. (1) Any action under section 81-15,230, except as provided in subsection (2) of this section, against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.

(2) Any action under subsection (3) of section 81-15,230 against the administrator may be brought in the United States District Court for the District of Columbia.

(3) Except as provided in subsection (2) of this section, the district court shall have jurisdiction in actions brought under section 81-15,230 against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement. The district court shall have jurisdiction in actions brought under section 81-15,230 against the commission and the director to order the commission and the director to perform the act or duty concerned.

Source: Laws 1997, LB 374, § 41.

81-15,232. Civil action; restriction. No action may be commenced under section 81-15,230 against an owner or operator of a facility if the administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under Title III with respect to the violation of the requirement.

Source: Laws 1997, LB 374, § 42.

81-15,233. Court award costs of litigation; attorney's fees. (1) In issuing any final order in any action brought under the Nebraska Emergency Planning and Community Right to Know Act, the court may award costs of litigation, including

reasonable attorney's fees and expert witness fees, to the prevailing or the substantially prevailing party if the court determines such an award is appropriate.

(2) Nothing in section 81-15,230 shall restrict or expand any right which any person or class of persons may have under any federal or state statute or common law to seek enforcement of any requirement of the act.

Source: Laws 1997, LB 374, § 43.

81-15,234. Intervention. (1) In any action under the Nebraska Emergency Planning and Community Right to Know Act, the State of Nebraska, if not a party, may intervene as a matter of right.

(2) In any action under the act, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest.

Source: Laws 1997, LB 374, § 44.

81-15,235. Rules and regulations. The Nebraska Emergency Management Agency shall as necessary adopt and promulgate rules and regulations to carry out its responsibilities under the Nebraska Emergency Planning and Community Right to Know Act. The Environmental Quality Council shall adopt and promulgate rules and regulations necessary for the Department of Environmental Quality to carry out its responsibilities under the act.

Source: Laws 1997, LB 374, § 45.

PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM CONTRACTORS CERTIFICATION AND SYSTEM REGISTRATION ACT

81-15,236. Act, how cited. Sections 81-15,236 to 81-15,253 shall be known and may be cited as the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act.

Source: Laws 2003, LB 94, § 1.

81-15,237. Purposes of act. The purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act are to:

(1) Protect the air, water, and land of the state through the certification and regulation of private onsite wastewater treatment system professionals in Nebraska;

(2) Require certified professionals for siting, layout, construction, reconstruction, alteration, modification, repair, inspection, and pumping of private onsite wastewater treatment systems and require that all siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping of any private onsite wastewater treatment system after August 31, 2003, be done by certified professionals in accordance with the act and rules and regulations adopted under the act;

(3) Provide for the registration of all private onsite wastewater treatment systems constructed, reconstructed, altered, or modified after August 31, 2003;

(4) Protect the health and general welfare of the citizens of Nebraska; and

(5) Protect the air, water, and land of the state from potential pollution by providing for proper siting, layout, construction, reconstruction, alteration, modification, repair, and pumping of private onsite wastewater treatment systems.

Source: Laws 2003, LB 94, § 2.

81-15,238. Definitions, where found. For purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, the definitions in sections 81-15,239 to 81-15,244 shall be used.

Source: Laws 2003, LB 94, § 3.

81-15,239. Advisory committee, defined. Advisory committee means the Private Onsite Wastewater Treatment System Advisory Committee created in section 81-15,245.

Source: Laws 2003, LB 94, § 4.

81-15,240. Certified professional, defined. Certified professional means a private onsite wastewater treatment system professional certified under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act to perform the tasks for which the certification has been issued.

Source: Laws 2003, LB 94, § 5.

81-15,241. Council, defined. Council means the Environmental Quality Council.

Source: Laws 2003, LB 94, § 6.

81-15,242. Department, defined. Department means the Department of Environmental Quality.

Source: Laws 2003, LB 94, § 7.

81-15,243. Director, defined. Director means the Director of Environmental Quality.

Source: Laws 2003, LB 94, § 8.

81-15,244. Private onsite wastewater treatment system, defined. Private onsite wastewater treatment system means any system of piping, treatment devices, or other appurtenances that convey, store, treat, or dispose of domestic or nondomestic wastewater, but not including wastewater from a livestock waste control facility, on the property where it originates or on nearby property under the control of the user, which system is not connected to a public sewer system.

Source: Laws 2003, LB 94, § 9.

81-15,245. Private Onsite Wastewater Treatment System Advisory Committee; created; members; expenses. The Private Onsite Wastewater Treatment System Advisory Committee is created. The advisory committee shall be composed of the following eleven members:

(1) Seven members appointed by the director as follows:

(a) Five private onsite wastewater treatment system professionals; and

(b) Two registered environmental health specialists or officials representing local public health departments which have established programs for regulating private onsite wastewater treatment systems;

(2) The Director of Health and Human Services Regulation and Licensure or his or her designated representative;

(3) The Director of Environmental Quality or his or her designated representative; and

(4) One representative with experience in soils and geology and one representative with experience in biological engineering, both of whom shall be designated by the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources.

Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The department shall provide administrative support for the advisory committee.

Source: Laws 2003, LB 94, § 10.

81-15,246. Advisory committee; duties. The advisory committee shall:

(1) Meet not less often than annually as determined by the director. The director may call special meetings of the advisory committee;

(2) Advise the department on proposed rules and regulations relating to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act;

(3) Advise the department on rules and regulations for the siting, layout, operation, and maintenance of private onsite wastewater treatment systems; and

(4) Advise the department on the administration of the act as requested by the director.

Source: Laws 2003, LB 94, § 11.

81-15,247. Rules and regulations. The council shall adopt and promulgate rules and regulations to carry out the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. Such rules and regulations shall provide for, but not be limited to:

(1) Certification of private onsite wastewater treatment system professionals;

(2) Establishing categories for such professionals to be certified under the act;

(3) Temporary, provisional, and hardship certifications;

(4) Examination requirements for certification;

(5) Continuing education requirements for certification;

(6) A fee schedule which shall cover direct and indirect costs to administer the act, including, but not limited to, system registration, application for certification, examination, and renewal, late fees for renewal, temporary, provisional, and hardship certifications, and fees for continuing education classes offered or approved by the department;

(7) Requirements for the registration of private onsite wastewater treatment systems to be constructed, reconstructed, altered, modified, or inspected by professionals certified under the act; and

(8) Requiring that all private onsite wastewater treatment system siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping be

performed by certified professionals in accordance with the act, rules and regulations adopted under the act, and other rules and regulations adopted and promulgated by the council.

Source: Laws 2003, LB 94, § 12.

81-15,248. Private onsite wastewater treatment system; professional required; when; registration; temporary provisional certificates; inspection and registration; director; powers. (1) Beginning January 1, 2004, a private onsite wastewater treatment system shall not be sited, laid out, constructed, reconstructed, altered, modified, repaired, inspected, or pumped unless the siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping is carried out or supervised by either a certified professional as required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, a professional engineer licensed in Nebraska, or a registered environmental health specialist registered in Nebraska.

(2) Beginning January 1, 2004, any private onsite wastewater treatment system constructed, reconstructed, altered, or modified by a certified professional, professional engineer licensed in Nebraska, or registered environmental health specialist registered in Nebraska shall be registered with the department by the certified professional, professional engineer, or registered environmental health specialist within forty-five days of completion of the construction, reconstruction, alteration, or modification. The certified professional, professional engineer, or registered environmental health specialist shall submit the registration on forms provided by the department and shall include the registration fee. The registration fee shall be fifty dollars until rules and regulations adopted and promulgated under the act provide a schedule of system registration fees adequate to cover direct and indirect program costs.

(3) The department may issue a temporary provisional certificate which shall satisfy the requirements of subsection (1) of this section until December 31, 2005, to an individual who applies to the department and includes with the application (a) a fee of three hundred dollars and (b) a properly executed and sworn affidavit stating that the applicant was engaged in activity relating to the siting, layout, construction, reconstruction, alteration, modification, repair, inspection, or pumping of a private onsite wastewater treatment system for at least twelve months preceding August 31, 2003. The affidavit shall specify the activity or activities listed in this subsection in which the applicant was engaged during such time.

(4) All temporary provisional certificates issued pursuant to subsection (3) of this section shall be subject to all administrative and enforcement authority of the department under the act and any rules and regulations relating to private onsite wastewater treatment systems adopted and promulgated by the council under the Environmental Protection Act.

(5) All temporary provisional certificates issued under subsection (3) of this section shall expire on December 31, 2005. Any individual holding a temporary provisional certificate wishing to become a certified professional under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act shall before such date meet the requirements for such certification contained in the rules and regulations of the council adopted and promulgated pursuant to section 81-15,247.

(6) The director by contract may delegate onsite wastewater treatment system inspection and registration to a governmental subdivision which has adopted a program at least as stringent as the requirements provided by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act and which has demonstrated authority to administer and enforce its onsite wastewater treatment system inspection and registration program.

Source: Laws 2003, LB 94, § 13; Laws 2004, LB 449, § 14.

81-15,249. Certificate; grounds for discipline. The director may revoke, suspend, or refuse to grant or renew a certificate issued pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, following opportunity for hearing, upon any reasonable ground, including, but not limited to, the following: (1) The certificate holder has engaged in fraud or deception; (2) the certificate holder has failed to meet the requirements of the act, the Environmental Protection Act, or rules and regulations of the council; (3) the certificate holder is unable to properly perform duties required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act; (4) the certificate holder has failed to maintain the minimum requirements of a certificate holder under the act; (5) the certificate holder has failed to demonstrate the required continuing education proficiency under the act; or (6) the certificate holder has failed to perform any other requirements of a certificate holder in accordance with the act or the rules and regulations adopted under the act.

Source: Laws 2003, LB 94, § 14.

81-15,250. Private Onsite Wastewater Treatment System Cash Fund; created; investment. The Private Onsite Wastewater Treatment System Cash Fund is created. Fees collected pursuant to the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act shall be remitted to the State Treasurer for credit to the fund. The fund shall be administered by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 94, § 15.

81-15,251. Certified professionals; additional requirements. The requirements of sections 81-1506 to 81-1511 shall apply to certified professionals.

Source: Laws 2003, LB 94, § 16.

81-15,252. Act; applicability. The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act does not apply to a private onsite wastewater treatment system at an electric generation facility site owned by a district organized under Chapter 70, article 6.

Source: Laws 2003, LB 94, § 17.

81-15,253. Violation; penalty. Any person violating any provision of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration

Act or rules and regulations adopted and promulgated pursuant to the act shall be subject to a civil penalty of not more than ten thousand dollars for each such violation. In the case of a continuing violation, each day shall constitute a separate violation.

Source: Laws 2003, LB 94, § 18.

SOLID WASTE DISPOSAL

13-1701. Terms, defined. For purposes of sections 13-1701 to 13-1714 and 76-2,119:

(1) Applicant shall mean any person as defined in section 81-1502 who is required to obtain a permit from the department for a solid waste disposal area or a solid waste processing facility but shall not include any person applying for renewal of such a permit or any person as defined in such section who proposes to dispose of waste which he or she generates on property which he or she owns as of January 1, 1991;

(2) Department shall mean the Department of Environmental Quality;

(3) Solid waste disposal area shall mean an area used for the disposal of solid waste from more than one residential premises or from one or more recreational, commercial, industrial, manufacturing, or governmental operations; and

(4) Solid waste processing facility shall mean an incinerator or a compost plant receiving material, other than yard waste, in quantities greater than one thousand cubic yards annually.

Source: Laws 1991, LB 813, § 1; Laws 1992, LB 1257, § 59.

13-1702. Request for siting approval. Prior to submitting an application to the department for a solid waste disposal area or solid waste processing facility, the applicant shall submit a request for siting approval to the city council, village board of trustees, or county board of commissioners or supervisors which governs the city, village, or county in which the proposed site is to be located. The city council, village board, or county board shall approve or disapprove the site for each solid waste disposal area or solid waste processing facility.

Source: Laws 1991, LB 813, § 2.

13-1703. Criteria. An applicant for siting approval shall submit information to the city council, village board of trustees, or county board of commissioners or supervisors to demonstrate compliance with the requirements of this section regarding a solid waste disposal area or solid waste processing facility. Siting approval shall be granted only if the proposed area or facility meets all of the following criteria:

(1) The solid waste disposal area or solid waste processing facility is necessary to accommodate the solid waste management needs of the area which the solid waste disposal area or solid waste processing facility is intended to serve;

(2) The solid waste disposal area or solid waste processing facility is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected. The applicant shall provide an evaluation of the potential for adverse health effects that could result from exposure to pollution, in any form, due to the proper or improper construction, operation, or closure of the proposed solid waste disposal area or solid waste processing facility;

(3) The solid waste disposal area or solid waste processing facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council, village board, or county board shall consider the advice of the appropriate planning commission regarding the application;

(4) The plan of operations for the solid waste disposal area or solid waste processing facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(5) The traffic patterns to or from the solid waste disposal area or solid waste processing facility are designed to minimize the impact on existing traffic flows; and

(6) Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council, village board, or county board. If a corporation, a parent company or subsidiary thereof, or any officer or board member of the corporation or the parent company or subsidiary applying for approval has been convicted of a felony within ten years of the date the application is filed, site approval shall not be granted.

Source: Laws 1991, LB 813, § 3; Laws 1992, LB 1257, § 60.

13-1704. Notice to property owners; publication; failure to notify; effect. No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request for siting approval to be served either in person or by registered or certified mail on the owners of all property within the proposed site area not solely owned by the applicant and on the owners of all property within one thousand feet in each direction of the lot line of the proposed site if the proposed site is inside or within three miles of the corporate limits of a city or village or on the owners of all property within two miles in each direction of the lot line of the proposed site for all other proposed sites. The owners shall be identified based upon the tax records of the county in which the proposed site is located.

Written notice shall be published in a newspaper of general circulation in the county in which the proposed site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the solid waste disposal area or solid waste processing facility, the probable life of the proposed solid waste disposal area or solid waste processing facility, the date when the request for siting approval will be submitted, and a description of the right of persons to comment on the request.

Failure to notify all landowners and failure to include all information in the publicized notice as required by this section shall not be considered noncompliance if a good faith effort at notice was made by the applicant which results in actual notice to substantially all parties required to be notified.

Source: Laws 1991, LB 813, § 4; Laws 1992, LB 1257, § 61.

13-1705. Request for siting approval; filing requirements; comments. An applicant shall file a copy of its request for siting approval with the city council, village board of trustees, or county board of commissioners or supervisors of the city, village, or county in which the proposed site is located. The request shall include the substance of

the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed solid waste disposal area or solid waste processing facility. All documents or other materials pertaining to the proposed area or facility on file with the city council, village board, or county board shall be made available for public inspection at the office of the city council, village board, or county board and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction.

Any person may file written comment with the city council, village board, or county board concerning the appropriateness of the proposed site for its intended purpose. Such comment shall be postmarked not later than thirty days after the date of the last public hearing held pursuant to section 13-1706 and shall be included in the record of the public hearing.

Source: Laws 1991, LB 813, § 5.

13-1706. Public hearing; procedure. At least one public hearing shall be held by the city council, village board of trustees, or county board of commissioners or supervisors no sooner than ninety days but no later than one hundred twenty days after receipt of the request for siting approval. A hearing shall be preceded by published notice in a newspaper of general circulation in the county, city, or village in which the proposed site is located. The public hearing shall develop a record sufficient to form the basis of an appeal of the decision.

Source: Laws 1991, LB 813, § 6.

13-1707. Final action; when required; amended application. Final action shall be taken by the city council, village board, or county board within one hundred eighty days after the filing of the request for site approval.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council, village board, or county board and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to section 13-1710. The time limitations prescribed in sections 13-1706 and 13-1708 for final action on an amended application shall be extended for an additional ninety days.

Source: Laws 1991, LB 813, § 7.

13-1708. Construction commencement date. Construction of a solid waste disposal area or solid waste processing facility which is granted siting approval pursuant to sections 13-1701 to 13-1714 and 76-2,119 shall commence within two calendar years from the date approval was granted, or the approval shall be nullified. If the siting decision is appealed, the two-year period shall begin on the date upon which the appeal process is concluded.

Source: Laws 1991, LB 813, § 8.

13-1709. Procedures; exclusive. The siting approval procedures, criteria, and appeal procedures provided for in sections 13-1701 to 13-1714 shall be the exclusive siting procedures and appeal procedures. Local zoning ordinances, other local land-use

requirements, and other ordinances or resolutions shall be considered in such siting decisions.

Source: Laws 1991, LB 813, § 9; Laws 1992, LB 1257, § 62.

13-1710. Fee. A city council, village board of trustees, or county board of commissioners or supervisors shall charge an applicant for siting approval a fee in an amount equal to the reasonable and necessary costs incurred by the city, village, or county in the siting approval process.

Source: Laws 1991, LB 813, § 10.

13-1711. Reapplication; restriction. An applicant shall not file a request for siting approval which is substantially the same as a request which was denied within the immediately preceding two years.

Source: Laws 1991, LB 813, § 11.

13-1712. Disapproval; hearing before district court. If the city council, village board of trustees, or county board of commissioners or supervisors does not approve a request for siting approval pursuant to sections 13-1701 to 13-1714 and 76-2,119, the applicant, within sixty days after notice of the decision, may petition for a hearing before the district court of the county in which the proposed site is located to contest the decision. The city council, village board, or county board shall appear as respondent in the hearing. At the hearing, the burden of proof shall be on the petitioner. In making its orders and determinations under this section, the district court shall consider the written decision and reasons for the decision of the city council, village board, or county board and the transcribed record of the hearing held pursuant to section 13-1706. The district court shall transmit a copy of its decision to the office of the city council, village board, or county board where it shall be available for public inspection and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction. Final action by the district court shall be taken within one hundred twenty days.

Source: Laws 1991, LB 813, § 12.

13-1713. Approval; contest; hearing before district court. If the city council, village board of trustees, or county board of commissioners or supervisors grants approval pursuant to sections 13-1701 to 13-1714 and 76-2,119, a third party other than the applicant who participated in the public hearing may petition the district court of the county in which the proposed site is located within sixty days after the filing of the written decision by the city council, village board, or county board for a hearing to contest the approval. Unless the district court determines that the petition is duplicitous or frivolous, the district court shall hear the petition in accordance with the procedures prescribed in section 13-1712. The burden of proof shall be on the petitioner, and the city council, village board, or county board and the applicant shall be named as correspondents.

The district court shall transmit a copy of its decision to the office of the city council, village board, or county board where it shall be available for public inspection and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction.

Source: Laws 1991, LB 813, § 13.

13-1714. Approval; contest; filing fee. Any person who files a petition with the district court to contest a decision of the city council, village board of trustees, or county board of commissioners or supervisors shall pay the required filing fee.

Source: Laws 1991, LB 813, § 14.

THE INTEGRATED SOLID WASTE MANAGEMENT ACT

13-2001. Act, how cited. Sections 13-2001 to 13-2043 shall be known and may be cited as the Integrated Solid Waste Management Act.

Source: Laws 1992, LB 1257, § 1; Laws 1994, LB 1207, § 1; Laws 2003, LB 143, § 1.

13-2002. Legislative findings and declarations. The Legislature hereby finds and declares that:

(1) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(2) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(3) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination has caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(4) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(5) Local governments are currently authorized to provide solid waste management services. As a group, counties and municipalities are best positioned to develop efficient solid waste management programs;

(6) An assignment of responsibility for integrated solid waste management should not prohibit governmental entities from procuring services from other units of governments or from private persons. It is the intent of the Legislature that natural resources districts, interlocal cooperative entities, tribal governments, and other statutory and voluntary regional organizations be encouraged to cooperatively provide financing or services to governmental entities responsible for solid waste management; and

(7) A variety of benefits results from a policy of integrated solid waste management, including the following environmental, economic, governmental, and public benefits:

(a) Not producing waste in the first instance is the most certain means for avoiding the widely recognized health and environmental damage associated with waste. Although waste reduction will never eliminate all wastes, to the extent that waste reduction is achieved it results in the most certain form of direct risk reduction;

(b) The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly governmental actions; and

(c) Public confidence in environmental policies of the government is important for the effectiveness of these policies. Waste reduction and recycling pose no adverse environmental and public health effects and do not therefor lead to increased public concern. Waste reduction and recycling also increase the public confidence that government and industry are doing all that is possible to protect the environment and the public health and welfare.

Source: Laws 1992, LB 1257, § 2.

13-2003. Definitions, where found. For purposes of the Integrated Solid Waste Management Act, the definitions found in sections 13-2004 to 13-2016.01 shall be used.

Source: Laws 1992, LB 1257, § 3; Laws 1994, LB 1207, § 4; Laws 2003, LB 143, § 2.

13-2004. Agency, defined. Agency shall mean any combination of two or more municipalities or counties acting together under the Interlocal Cooperation Act or the Joint Public Agency Act, a natural resources district acting alone or together with one or more counties and municipalities under either of such acts, any joint entity as defined in section 13-803, or any joint public agency as defined in section 13-2503.

Source: Laws 1992, LB 1257, § 4; Laws 1999, LB 87, § 56.

13-2005. Council, defined. Council shall mean the Environmental Quality Council.

Source: Laws 1992, LB 1257, § 5.

13-2006. County, defined. County shall mean any county in the State of Nebraska.

Source: Laws 1992, LB 1257, § 6.

13-2007. County solid waste jurisdiction area, defined. County solid waste jurisdiction area shall mean all areas of a county not located within the corporate limits of a municipality except a facility which does not serve unincorporated areas of the county.

Source: Laws 1992, LB 1257, § 7.

13-2008. Department, defined. Department shall mean the Department of Environmental Quality.

Source: Laws 1992, LB 1257, § 8.

13-2009. Director, defined. Director shall mean the Director of Environmental Quality.

Source: Laws 1992, LB 1257, § 9.

13-2010. Facility, defined. Facility shall mean any site owned and operated or utilized by any person for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste and shall include a solid waste landfill.

Source: Laws 1992, LB 1257, § 10.

13-2011. Integrated solid waste management, defined. Integrated solid waste management shall mean solid waste management which is focused on planned development of programs and facilities that reduce waste toxicity and volume, recycle marketable materials, and provide for safe disposal of residuals.

Source: Laws 1992, LB 1257, § 11.

13-2012. Municipal solid waste jurisdiction area, defined. Municipal solid waste jurisdiction area shall mean all the incorporated areas of a city or of a village.

Source: Laws 1992, LB 1257, § 12.

13-2013. Municipality, defined. Municipality shall mean any city or village incorporated under the laws of this state.

Source: Laws 1992, LB 1257, § 13.

13-2013.01. Passenger tire equivalent of waste tires, defined. Passenger tire equivalent of waste tires means twenty pounds of waste tire or processed waste tire.

Source: Laws 2003, LB 143, § 3.

13-2013.02. Scrap tire or waste tire, defined. Scrap tire or waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

Source: Laws 2003, LB 143, § 4.

13-2014. Solid waste, defined. Solid waste shall have the definition found in section 81-1502.

Source: Laws 1992, LB 1257, § 14.

13-2015. Solid waste management plan, defined. Solid waste management plan shall mean a plan adopted by a county or municipality, including a joint plan adopted by an agency, for integrated solid waste management.

Source: Laws 1992, LB 1257, § 15.

13-2016. System, defined. System shall mean any equipment, vehicles, facilities, personnel, or contractors utilized for the purpose of collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste

Source: Laws 1992, LB 1257, § 16.

13-2016.01. Yard waste, defined. Yard waste shall mean grass and leaves.

Source: Laws 1994, LB 1207, § 5.

13-2017. Policy of the state. It is the policy of this state:

(1) To encourage the development of integrated solid waste management programs, including waste volume reduction and recycling programs and education, at the local governmental level through incentives, technical assistance, grants, and other practical measures;

(2) To support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development in Nebraska of businesses relating to waste reduction and recycling;

(3) To provide education concerning the components of integrated solid waste management, at the elementary level through the high school level and through community organizations, to enhance the success of local programs requiring public involvement; and

(4) To support and encourage manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound and which enhance waste reduction by creating products which have longer usage life and which are adaptable to secondary uses, require less input material, and decrease resource consumption.

Source: Laws 1992, LB 1257, § 17.

13-2018. Solid waste management hierarchy; established; cooperative program; established. (1) An effective and efficient program of integrated solid waste management protects the environment and the public and provides the most practical and beneficial use of the solid waste material. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following solid waste management hierarchy, in descending order of preference, is established as the integrated solid waste management policy of the state:

(a) Volume reduction at the source;

(b) Recycling, reuse, and vegetative waste composting;

(c) Land disposal;

(d) Incineration with energy resource recovery; and

(e) Incineration for volume reduction.

(2) In the implementation of the integrated solid waste management policy, the state shall establish and maintain a cooperative state and local program of project planning and technical assistance to encourage integrated solid waste management.

Source: Laws 1992, LB 1257, § 18.

13-2019. Tribal governments; assume responsibility for integrated solid waste management; department; duties. Because of the rights of both tribal sovereignty and Nebraska citizenship of individuals under the jurisdiction of federally recognized tribal governments, such tribal governments are recognized as localities which can assume responsibility for integrated solid waste management. The department shall present the state's comprehensive solid waste management plan completed pursuant to section 81-15,166 to the federally recognized tribal governments in Nebraska and encourage such tribes to adopt the state's laws, rules, regulations, and standards for integrated solid waste management.

Source: Laws 1992, LB 1257, § 19.

13-2020. County, municipality, or agency; provide or contract for disposal of solid waste; joint ownership of facility; governing body; powers and duties; rates and charges. (1) Effective October 1, 1993, each county and municipality shall provide or contract for facilities and systems as necessary for the safe and sanitary disposal of solid waste generated within its solid waste jurisdiction area. Such disposal shall comply with rules and regulations adopted and promulgated by the council for integrated solid waste management programs.

(2) A county, municipality, or agency may jointly own, operate, or own and operate with any person any facility or system and may enter into cooperative agreements as necessary and appropriate for the ownership, operation, or ownership and operation of any facility or system.

(3) A county, municipality, or agency may, either alone or in combination with any other county, municipality, or agency, contract with any person to provide any service, facility, or system required by the Integrated Solid Waste Management Act.

(4) The governing body of a county, municipality, or agency may make all necessary rules and regulations governing the use, operation, and control of a facility or system. Such governing body may establish just and equitable rates or charges to be paid to it for the use of such facility or system by each person whose premises are served by the facility or system, including charges for late payments, except that no city of the metropolitan class shall impose any rate or charge upon individual residences unless a majority of those voting in a regular or special election vote affirmatively to approve or authorize establishment of such a rate or charge. For purposes of the charges authorized by this section, the premises are served if solid waste collection service is available to the premises or if a community solid waste drop-off location is provided, unless the person who would otherwise be subject to such rates or charges proves to the governing body of the county, municipality, or agency that his or her solid waste was lawfully collected and hauled to a permitted facility. Such proof shall be provided by a receipt from a permitted facility, a statement from a licensed hauler, or other documentation acceptable to the governing body of the county, municipality, or agency. If the service charge so established is not paid when due, such sum may be recovered by the county, municipality, or agency in a civil action or, following notice by regular United States mail to the last-known address of the property owner of record and an opportunity for a hearing, may be certified by the governing body of the county, municipality, or agency to the county treasurer and assessed against the premises served and collected or returned in the same manner as other taxes are certified, assessed, collected, and returned.

(5) If the county, municipality, or agency enters into a contract with a person to provide a facility or system, such contract may authorize the person to charge the owners of premises served such a service rate therefor as the governing body determines to be just and reasonable or the county, municipality, or agency may pay therefor out of its general fund or the proceeds of any tax levy applicable to the purposes of such contract or assess the owners of the premises served a reasonable charge therefor to be collected as provided in this section and paid into a fund to be used to defray such contract charges.

Source: Laws 1992, LB 1257, § 20; Laws 1997, LB 495, § 1.

13-2021. County, municipality, or agency; facility or system; powers and duties; referendum and limited referendum provisions; applicability. A county, municipality, or agency may purchase, plan, develop, construct, equip, maintain, and improve facilities and systems and may lease or acquire land in fee by gift, grant, purchase, or condemnation as necessary for the construction and operation of a facility or system. A county, municipality, or agency may also make and enter into contracts with any person for the planning, development, construction, maintenance, or operation of such facility or system or any part thereof. Measures adopted or enacted by municipalities with respect to any facility or system shall constitute measures subject to limited referendum under subsection (2) of section 18-2528, and a municipality shall be authorized to exempt all subsequent measures relating to the same project from referendum and limited referendum as provided under subsection (4) of such section.

Source: Laws 1992, LB 1257, § 21.

13-2022. County, municipality, or agency; closure of facility, postclosure care, and investigative and corrective action; powers and duties; tax; special trust funds. A county, municipality, or agency shall close a facility, provide postclosure care, and undertake investigative and corrective action in accordance with rules and regulations adopted by the council. The costs associated with or reasonably anticipated for such closure, postclosure care, and investigative and corrective action may be included within the rates and charges authorized by section 13-2020 and within the amounts payable under service agreements adopted pursuant to section 13-2024.

Every county, municipality, and agency may approve, execute, and deliver contractual agreements to assume financial responsibility for the payment of costs of closure, postclosure care, or investigative or corrective action with respect to any facility. Such agreements may provide for a binding general obligation of such county, municipality, or agency obligating payments in future years.

For the payment or performance of the terms of any such agreement, any county or municipality may agree to levy or cause to be levied an annual tax upon the taxable property within such county or municipality in an amount sufficient for such purposes. Any such tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

Every county, municipality, and agency may also approve, execute, and deliver one or more trust agreements, with any bank having trust powers or a trust company, providing for the creation of one or more special trust funds to provide for the payment of costs of closure, postclosure care, or investigative or corrective action.

No county, municipality, or agency shall be required to provide proof of financial responsibility to obtain or renew a permit for a facility which is not used for disposal of solid waste.

Source: Laws 1992, LB 1257, § 22; Laws 1994, LB 1207, § 6.

13-2023. County, municipality, or agency; regulations authorized; limitations; noncompliance fee. A county, municipality, or agency may, by ordinance or resolution, adopt regulations governing collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste within its solid

waste jurisdiction area as necessary to protect the public health and welfare and the environment. Regulations authorized by this section shall be equal to or more stringent than the provisions of the Integrated Solid Waste Management Act and rules and regulations adopted and promulgated by the council as authorized by the act. Any person who violates any such regulation shall be subject to a noncompliance fee not to exceed five hundred dollars.

Source: Laws 1992, LB 1257, § 23.

13-2024. County or municipality; service agreement with agency; authorized provisions; special tax authorized. Notwithstanding any other provision of Nebraska law, any county or municipality may enter into a service agreement with an agency which owns and operates or proposes to own and operate any solid waste management facility or system for obtaining solid waste management services from such agency. Any such service agreement may provide for the following:

(1) The payment of fixed or variable periodic amounts for service or the right to obtain service;

(2) That such service agreement may extend for a term of years as determined by the governing body of the county or municipality and be binding upon such county or municipality over such term of years;

(3) That variable or fixed amounts payable under such contracts may be determined based upon one or more of the following factors:

(a) Operating and maintenance expenses of the agency, including contract renewal and replacement for plant and equipment;

(b) Amounts payable by the agency with respect to debt service on its bonds or other obligations, including margins of coverage if deemed appropriate; and

(c) Amounts necessary for the agency to build or maintain operating reserves, capital reserves, and debt service reserves;

(4) That any such service agreement may require payment to be made in the agreed fixed or variable amounts irrespective of whether such facility or system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such facility or system; and

(5) Such other provisions as the agency and county or municipality deem appropriate in connection with providing and obtaining solid waste management services.

In order to provide for the payments due under any such service agreement, any county or municipality may pledge the revenue received from any and all rates and charges received or to be received from provision of solid waste management services or from contracts with any other persons or entities, private or public, and may further provide, if determined appropriate by the governing body, that any deficiency in such revenue may be made up from a special tax levied for such purpose upon all taxable property within such county or municipality, which special tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

Source: Laws 1992, LB 1257, § 24.

13-2025. County, municipality, or agency; service agreement; fees and charges; amount. Any county, municipality, or agency entering into any service agreement under section 13-2024 shall fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities furnished to its customers and users by and through its system as will be sufficient to:

(1) Pay (a) the cost of operating and maintaining the system and renewals or replacements thereto, including all amounts due and payable under such service agreement, and (b) the interest on and principal of any outstanding bonds or other indebtedness of the county, municipality, or agency relative to the service agreement, whether at maturity or upon sinking-fund redemption, which are payable from the revenue of its system; and

(2) Provide, as may be required by any resolution, ordinance, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for such operating and maintenance expenses and for any margins or coverages over and above debt service.

Source: Laws 1992, LB 1257, § 25.

13-2025.01. Joint entity or joint public agency; reporting of budget; filing required. Any joint entity or joint public agency created to fulfill the purposes of the Integrated Solid Waste Management Act pursuant to the Interlocal Cooperation Act or Joint Public Agency Act shall comply with the Municipal Proprietary Function Act for purposes of reporting its budgets. Proprietary budget statements for the joint entity or joint public agency shall be placed on file with the office of the municipal clerk of each member which is a municipality as required by the Municipal Proprietary Function Act and with the county clerk of each member which is a county.

Source: Laws 1994, LB 1207, § 2; Laws 1999, LB 87, § 57.

13-2026. Municipalities, counties, and agencies; regulate solid waste management; when. In furtherance of the policy of the state as set forth in the Integrated Solid Waste Management Act, municipalities, counties, and agencies may by ordinance or resolution adopt rules and regulations or may adopt bylaws or enter into written agreements between and among themselves or other persons which regulate and govern solid waste management within their solid waste jurisdiction areas, including the establishment of conditions to assure that a specified amount and type of solid waste will be delivered to a specific facility.

Source: Laws 1984, LB 911, § 2; R.S.1943, (1987), § 81-1572;
Laws 1992, LB 1257, § 26.

13-2027. Municipalities, counties, and agencies; regulation of competition and antitrust; exemption. In exercising the powers granted in the Integrated Solid Waste Management Act, municipalities, counties, and agencies shall be exempt from all rules and regulations of state regulatory competition. It is intended that municipalities, counties, or agencies carrying out the activities described in the act receive full exemption and immunity from state and federal antitrust laws in light of the public purpose and regulatory provisions provided by the act. The exemption granted pursuant to this section shall not be construed to diminish any other exemption for similar activities

authorized through grants of authority to other public bodies even though such exemption may not be stated in terms of antitrust.

Source: Laws 1984, LB 911, § 3; R.S.1943, (1987), § 81-1573; Laws 1992, LB 1257, § 27.

13-2028. Exemption; limitation. The exemption granted under section 13-2027 shall not constitute a waiver of or exemption from the bidding provisions of sections 16-321 and 17-568.01 or any other similar provision.

Source: Laws 1984, LB 911, § 4; R.S.1943, (1987), § 81-1574; Laws 1992, LB 1257, § 28.

13-2029. Counties and municipalities; statement of intent; filings; failure to file; effect. On or before October 1, 1992, each county and municipality shall file a statement of intent with the department describing the way in which it intends to fulfill its responsibility for integrated solid waste management. If a municipality or county intends to enter into a cooperative relationship with another entity to fulfill such responsibility, documentation of the reciprocal intent of those entities shall be included with the statement. If no statement of intent is filed by a municipality or county, the responsibility for integrated solid waste management shall remain with the nonfiling county or municipality.

Source: Laws 1992, LB 1257, § 29.

13-2030. Counties and municipalities; certification of facility and system capacity; filing required; department; approval; restrict access to facilities and systems; when. On or before October 1, 1993, a certification shall be filed with the department on behalf of each county and municipality with respect to (1) facility and system capacity for solid waste management for the solid waste generated within each solid waste jurisdiction area and (2) facility and system capacity for solid waste generated outside of each solid waste jurisdiction area and disposed of in facilities within each solid waste jurisdiction area. If a county or municipality is unable to certify capacity for waste generated outside its solid waste jurisdiction area, it may restrict access to its facilities and systems for such solid waste. Such certification shall be approved by the department if it is found to be in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted under the act.

Source: Laws 1992, LB 1257, § 30.

13-2031. Integrated solid waste management plan; filing; approval. On or before October 1, 1994, an integrated solid waste management plan shall be filed with the department on behalf of each county and municipality. Such plan shall be approved by the department if it is found to be in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted under the act.

Source: Laws 1992, LB 1257, § 31.

13-2032. Integrated solid waste management plan; minimum requirements; waste reduction and recycling program; priorities; updated plan. (1) Each integrated solid waste management plan filed pursuant to section 13-2031 shall at a minimum:

(a) Certify facility and system capacity for solid waste management for the solid waste generated within each solid waste jurisdiction area for the twenty years following October 1, 1994;

(b) Certify facility and system capacity for solid waste generated outside of each solid waste jurisdiction area and disposed of in facilities within each solid waste jurisdiction area for the twenty years following October 1, 1994. If a county or municipality is unable to certify capacity for waste generated outside its solid waste jurisdiction area, it may restrict access to its facilities and systems for such solid waste;

(c) Incorporate and reflect the waste management hierarchy of the state integrated solid waste management policy;

(d) State the extent to which solid waste generated within the area covered by the plan is or can be recycled;

(e) State the economic and technical feasibility of using other existing disposal facilities in lieu of initiating new disposal facilities or of continuing the use of disposal facilities in use at the time the plan is filed;

(f) State the expected environmental impact of alternative solid waste disposal methods, including the use of landfills;

(g) State a specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact; and

(h) State such additional information, data, and studies as may be required pursuant to rules and regulations adopted by the council.

(2) The integrated solid waste management plan shall provide for a local waste reduction and recycling program. If technically and economically feasible, the volume of materials disposed of in landfills as of July 1, 1994, shall be reduced by twenty-five percent as of July 1, 1996, by forty percent as of July 1, 1999, and by fifty percent as of July 1, 2002. Any county, municipality, or agency which had in effect a recycling or waste reduction program prior to July 1, 1994, shall be credited with the waste-stream reduction achieved prior to July 1, 1994, with respect to the July 1, 1996, goal. The following wastes shall be given first priority when developing reduction and recycling programs and related timetables in relation to an integrated solid waste management plan:

(a) Yard wastes;

(b) Unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act;

(c) Discarded tires;

(d) Waste oil;

(e) Lead-acid batteries; and

(f) Discarded household appliances.

In addition, such plan shall provide a methodology for implementing a program of separation of wastes, including, but not limited to, glass, plastic, paper, and metal.

(3) The solid waste management plan shall be updated for compliance with federal and state laws and regulations as required by the department and may be updated, subject to approval by the department, at any time to reflect local needs and conditions.

Source: Laws 1992, LB 1257, § 32.

13-2033. Dumping or depositing solid waste; permit; council; powers and duties; exemptions; storage of passenger tire equivalents of waste tires; access to property. (1) Except as provided in subsections (2) and (3) of this section, no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility. The council may adopt and promulgate rules and regulations regarding the permitting of this activity, which rules and regulations shall protect the public interest but may be based upon criteria less stringent than those regulating a landfill. The council may adopt and promulgate rules and regulations defining beneficial reuse and establishing construction standards and other criteria exempting from permit requirements under this section the following: (a) The use of dirt, stone, brick, or some inorganic compound for landfill, landscaping excavation, or grading purposes; (b) the placement of tires, posts, or ferrous objects, not contaminated with other wastes, for agricultural uses, such as bumpers on agricultural equipment, for ballast to maintain covers or structures on the agricultural site, for blowout stabilization, for fish habitat, or for tire mats for bank stabilization; or (c) such other waste placement or depositing activities that are found not to pose a threat to the public health or welfare. In developing construction standards, the council shall consider standards and practices established by the American Society for Testing and Materials.

(2) No person shall be found to be in violation of this section if (a) the solid waste generated by an individual is disposed of on such individual's property, (b) such property is outside the corporate limits of a municipality, and (c) the department determines that the county has not provided integrated solid waste management facilities for its residents.

(3) No person shall be found to be in violation of this section for storing five hundred or fewer passenger tire equivalents of waste tires. Storage of passenger tire equivalents of waste tires for more than one year without reuse, recycling, or shipment out of state is presumed to constitute disposal of solid waste under subsection (1) of this section. Speculative accumulation of more than five hundred passenger tire equivalents of waste tires shall be deemed disposal of solid waste and is prohibited. Tires are not accumulated speculatively if, in a calendar year beginning on January 1, the amount of tire material that is reused or recycled by weight equals at least seventy-five percent of such material at the beginning of the year. The burden of proof that passenger tire equivalents of waste tires have not been speculatively accumulated rests with the person accumulating the passenger tire equivalents of waste tires to demonstrate through written documentation that the passenger tire equivalents of waste tires have not been accumulated speculatively. Any person, business, or other entity engaged in the business of picking up, hauling, and transporting scrap tires for storage, processing, or recycling shall obtain a permit from the department before engaging in such activity. The council may adopt rules and regulations regarding such permits and may exempt from permit requirements those entities having involvement with scrap tires which is incidental to their primary business activity. Persons holding a permit on August 31, 2003, may continue to operate under such permits until new rules and regulations are established under this section. As a condition for obtaining a permit under this section, the department shall require the permittee to provide the department with an annual report indicating the number of scrap tires hauled, the location of the delivery of such scrap

tires, and any additional information the council believes necessary to accomplish the purposes of the Integrated Solid Waste Management Act.

(4) If necessary in the course of an investigation or inspection or during remedial or corrective action and if the owner of the subject property or the owner's agent has specifically denied access to the department for such purposes, the director may order the owner or owner's agent to grant access to such property for the performance of reasonable steps to determine the source and extent of contamination, for remediation, or for other corrective action, including drilling and removal of wastes. Access shall be by the department or by a person conducting the investigation, inspection, or remedial action at the direction of the department. The property shall be restored as nearly as possible to its original condition at the conclusion of the investigation, inspection, or remedial action.

Source: Laws 1992, LB 1257, § 33; Laws 2003, LB 142, § 1; Laws 2003, LB 143, § 5.

13-2034. Rules and regulations. The council shall adopt and promulgate rules and regulations which shall include the following:

(1) A permit program for facilities providing for permits to be issued to owners and operators;

(2) Requirements for the collection, source separation, storage, transportation, transfer, processing, recycling, resource recovery, treatment, and disposal of solid wastes as well as developmental and operational plans for facilities. Regulations concerning operations may include waste characterization, composition, and source identification, site improvements, air and methane gas monitoring, ground water and surface water monitoring, daily cover, insect and rodent control, salvage operations, waste tire disposal, safety and restricted access, inspection of loads and any other necessary inspection or verification requirements, reporting of monitoring analysis, record-keeping requirements and other reporting requirements, handling and disposal of wastes with special characteristics, and any other operational criteria, location criteria, or design criteria necessary to minimize environmental and health risks and to provide protection of the air, land, and waters of the state; and

(3) Requirements for closure, postclosure care and monitoring, and investigative and corrective action with respect to landfills. Such rules and regulations shall require financial assurance for such activities after April 9, 1996. Such rules and regulations shall impose any necessary requirements upon owners or operators in order to assure proper closure, care, monitoring, and investigative and corrective action with respect to landfills to minimize the need for future maintenance and eliminate, to the extent necessary to protect humans, animals, and the environment, releases or the threat of releases of contaminants or leachate.

Source: Laws 1992, LB 1257, § 34; Laws 1994, LB 1207, § 7; Laws 1995, LB 668, § 1.

13-2035. Applicant for facility permit; exemption from siting approval requirements; when; application; contents. Any applicant who applies to the department for a permit for a facility pursuant to the Integrated Solid Waste Management Act shall be exempt from the siting approval requirements of sections 13-1701 to 13-1714 if a county, municipality, or agency is to be the owner of the facility and the facility is to be

located in a county the unincorporated areas of which are among the areas to be served by such facility or the facility is to be located in the county of a municipality to be served by such facility if such facility will not serve unincorporated areas of a county.

The application of such county, municipality, or agency shall show that the applicant:

(1) Has considered the siting, operational, and traffic criteria established by section 13-1703;

(2) Has given notice of the proposed siting pursuant to the procedures established by section 13-1704;

(3) Has conducted a public hearing regarding the proposed siting preceded by published notice in a newspaper of general circulation in the county or municipality in which the proposed facility is to be located; and

(4) Has submitted a record of such hearing with its application to the department.

Source: Laws 1992, LB 1257, § 35.

13-2036. Applications for permits; contents; department; powers and duties; contested cases; variance. (1) The department shall review applications for permits for facilities and provide for the issuance, modification, suspension, denial, or revocation of permits after public notice. Applications shall be on forms provided by the department which solicit information necessary to make a determination on the application. The department shall issue public notice of its intent to grant or deny an application for a permit within sixty days after receipt of an application containing all required information. If an application is granted and the permit is issued or modified, any aggrieved person may file a petition for a contested case with the department within thirty days after the granting or modification of the permit, but such petition shall not act as a stay of the permit. If an application is denied, the department shall provide written rationale therefor to the applicant. Any change, modification, or other deviation from the terms or conditions of an approved permit must be approved by the director prior to implementation.

(2) The department shall condition the issuance of permits on terms necessary to protect the public health and welfare and the environment as well as compliance with all applicable regulations. Any applicant may apply to the department for a variance from rules and regulations. The director may grant such variance if he or she finds that the public health and welfare will not be endangered or that compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public. The considerations, procedures, conditions and limitations set forth in section 81-1513 shall apply to any variance granted pursuant to this section.

(3) The director shall require the owner or operator of a facility to undertake investigation and corrective action in the event of contamination or a threat of contamination caused by the facility. Financial assurance for investigative or corrective action may be required in an amount determined by the director following notice and hearing.

(4) In addition to the information required by this section, the following specific areas shall be addressed in detail in any application filed in conjunction with the issuance, renewal, or reissuance of a permit for a facility:

(a) A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure of the facility as defined by the council. The plan shall include, but not be limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting the costs;

(b) A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of such control and treatment; and

(c) An emergency response and remedial action plan, including provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment and the identification of possible occurrences that may endanger human health and environment.

If such application is modified after approval by the department, the application shall be resubmitted as a new proposal.

Source: Laws 1992, LB 1257, § 36; Laws 1994, LB 1207, § 8.

13-2037. Comprehensive state plan for solid waste management; department; duties; rules and regulations; requirements; approval of state plan. (1) The department shall keep current the comprehensive state plan for solid waste management developed pursuant to section 81-15,166, including the rules, regulations, and guidelines adopted by the council for facilities in cooperation with local governments and with agencies.

(2) Rules and regulations adopted and promulgated by the council shall comply with rules and regulations promulgated by the Environmental Protection Agency pursuant to the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., including the exemptions and deadlines provided for in 40 C.F.R. 258.1.

(3) The department shall apply for approval to the Environmental Protection Agency to attain an approved state program for solid waste management.

Source: Laws 1992, LB 1257, § 37.

13-2038. Definition of certain solid wastes; council; adopt rules and regulations. The council shall adopt and promulgate rules and regulations which define lead-acid batteries, discarded household appliances, waste oil, and unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act.

Source: Laws 1992, LB 1257, § 38; Laws 1994, LB 1207, § 9.

13-2039. Land disposal of certain solid wastes; prohibited; when; exceptions. (1)(a) A landfill may accept yard waste without condition from December 1 through March 31 of each year.

(b) A landfill may accept yard waste year-round if such yard waste:

(i) Will be used for the production and recovery of methane gas for use as fuel (A) with the approval of the department and (B) at a landfill operating as a solid waste

management facility with a permit issued pursuant to the department's rules and regulations; or

(ii) Has been separated at its source from other solid waste and will be used for the purpose of soil conditioning or composting.

(c) State and local governmental entities responsible for the maintenance of public lands shall give preference to the use of composted materials in all land maintenance activities. This section does not prohibit the use of yard waste as land cover or as soil-conditioning material.

(2) Land disposal of lead-acid batteries and waste oil is prohibited.

(3)(a) Land disposal of waste tires in any form is prohibited except tires that are nonrecyclable. For purposes of this subsection, nonrecyclable tire means a press-on solid tire, a solid pneumatic shaped tire, or a foam pneumatic tire.

(b) On and after September 1, 2003, placing or causing the placement or disposal of scrap tires in any form into the waters of the state is prohibited except as provided in section 13-2033.

(c) Tires are not considered disposed if they are (i) processed into crumb rubber form and reused or recycled in manufactured products such as, but not limited to, products used for schools, playgrounds, and residential, lawn, and garden applications, (ii) used as safety barriers for race courses for motorized vehicles, on the condition that the tires are bolted together and properly wrapped, and not in loose, compressed, or baled form, (iii) used as tire-derived fuel, (iv) retreaded, (v) processed into chip or shred form and used as drainage media in landfill construction or septic drain fields, (vi) used as a raw material in steelmaking, or (vii) processed into shred form and used as an alternative daily cover in a landfill or for a civil engineering project if such project is designed and constructed in compliance with the Engineers and Architects Regulation Act and prior approval for such project is obtained from the department by the tire shredder and the end user, except that departmental approval is not necessary for a tire project involving three thousand five hundred or fewer passenger tire equivalents of waste tires if the department receives notification of the project not later than thirty days prior to any construction on such project. The notification shall contain the name and address of the tire shredder and end user, the location of the project, a description of the type of project, the number of passenger tire equivalents of waste tires to be used, and any additional information the council determines is necessary to accomplish the purposes of the Integrated Solid Waste Management Act.

A race sponsor using tires as safety barriers pursuant to subdivision (3)(c)(ii) of this section prior to October 1, 2006, shall file an approved tire disposal plan with the department on or before January 1, 2007. A race sponsor using tires as safety barriers on or after October 1, 2006, shall file an approved tire disposal plan with the department prior to the sponsor's first such use of tires. An approved tire disposal plan shall provide for the disposal of tires which cease to be used as safety barriers in accordance with subsection (3) of section 13-2033, and any such race sponsor who ceases to use tires as safety barriers or whose facility ceases operation shall dispose of such tires in accordance with his or her approved tire disposal plan. Any modification to an approved tire disposal plan shall be submitted to and approved by the department prior to implementation of such modified plan. An approved tire disposal plan shall continue in effect as long as such sponsor uses tires as safety barriers.

(4) Land disposal of discarded household appliances is prohibited.

(5) Land disposal of unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act is prohibited unless such disposal occurs at a licensed hazardous waste disposal facility.

(6) For purposes of this section, land disposal shall include, but not be limited to, incineration at a landfill.

Source: Laws 1992, LB 1257, § 39; Laws 1994, LB 1034, § 1;
Laws 1994, LB 1207, § 10; Laws 1995, LB 42, § 1;
Laws 2003, LB 143, § 6; Laws 2006, LB 776, § 1;
Laws 2006, LB 818, § 1.

13-2040. Licenses issued under prior law; department review; expiration; permits issued under act; expiration. The department shall review all licenses for solid waste management facilities which were issued under the Environmental Protection Act prior to July 15, 1992, and which expire after October 1, 1993, to determine whether the licensee is in compliance with the requirements of the Integrated Solid Waste Management Act and the rules and regulations adopted by the council.

The department may require such licensee to furnish written documentation evidencing compliance. If the department determines that the licensee is not in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted by the council, the department may issue an amended permit as necessary to bring the licensee into compliance with these provisions.

All licenses for solid waste management facilities issued under the Environmental Protection Act prior to July 15, 1992, shall expire at the stated date of expiration if such expiration date is before October 1, 1993, except that the department may extend such licenses to continue until October 1, 1993, if it finds that the facility remains in compliance with the Environmental Protection Act and the rules and regulations adopted thereunder by the council prior to July 15, 1992.

Permits for solid waste processing facilities, as defined in rules and regulations adopted and promulgated by the council, issued pursuant to the Integrated Solid Waste Management Act shall expire not more than ten years following the date of issuance, as determined by the department. Permits may be renewed only if the department determines, upon application, that the permitholder is in compliance with all requirements of the act.

Permits for solid waste disposal areas, as defined in rules and regulations adopted and promulgated by the council, issued pursuant to the act shall expire not more than five years following the date of issuance as determined by the department. Permits may be renewed only if the department determines, upon application, that the permitholder is in compliance with all requirements of the act.

Source: Laws 1992, LB 1257, § 40; Laws 1997, LB 752, § 72;
Laws 2003, LB 143, § 7.

13-2041. Integrated Solid Waste Management Cash Fund; created; use; investment; application fee schedule; council; establish; permitholder; annual fee. There is hereby created the Integrated Solid Waste Management Cash Fund. All fees collected by the department pursuant to this section or fees designated pursuant to

section 13-2042 or money forfeited under subsection (21) of section 81-1505 shall be remitted to the State Treasurer for credit to the fund. Forfeited funds may only be used for purposes specified in the underlying financial assurance instrument. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The council shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the department by persons applying for a permit to operate a facility pursuant to the Integrated Solid Waste Management Act or the Environmental Protection Act. Payment shall be made in full to the department before the application is processed.

By October 1 of each year, any person holding a permit under the Integrated Solid Waste Management Act or to operate a solid waste management facility under the Environmental Protection Act shall pay an annual fee in an amount to be determined by the council. The annual fee shall be sufficient to cover the costs of ongoing permit considerations. The fees collected pursuant to this section shall not exceed the amount necessary to pay reasonable costs of administering the permit program pursuant to the Integrated Solid Waste Management Act or the Environmental Protection Act.

The State Treasurer shall transfer one million three hundred eighty-four thousand four hundred eighty-four dollars from the Integrated Solid Waste Management Cash Fund to the Superfund Cost Share Cash Fund on or before June 1, 2006.

Source: Laws 1992, LB 1257, § 41; Laws 1994, LB 1066, § 12; Laws 2006, LB 1061, § 1.

13-2042. Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties. (1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste disposed of at landfills regulated by the department. Each operator of a landfill disposal facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill has the same definition as municipal solid waste landfill unit in 40 C.F.R. part 258, subpart A, section 258.2.

(2) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at that facility during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(3) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(4) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(5) Fifty percent of the total of such fees collected in each quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of responding to spills or other environmental emergencies, of regulating, investigating, remediating,

and monitoring facilities during and after operation of facilities, or of performance of regulated activities under the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act. The department may seek recovery of expenses paid from the fund for responding to spills or other environmental emergencies or for investigation, remediation, and monitoring of a facility from any person who owned, operated, or used the facility in violation of the Integrated Solid Waste Management Act, the Livestock Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act in a civil action filed in the district court of Lancaster County. Of the amount credited to the Integrated Solid Waste Management Cash Fund, the department may disburse amounts to political subdivisions for costs incurred in response to and remediation of any solid waste disposed of or abandoned at dump sites or discrete locations along public roadways or ditches and on any contiguous area affected by such disposal or abandonment. Such reimbursement shall be by application to the department on forms prescribed by the department. The department shall prepare and make available a schedule of eligible costs and application procedures which may include a requirement of a demonstration of preventive measures to be taken to discourage future dumping. The department may not disburse to political subdivisions an amount which in the aggregate exceeds five percent of total revenue from the disposal fees collected pursuant to this section in the preceding fiscal year. These disbursements shall be made on a fiscal-year basis, and applications received after funds for this purpose have been exhausted may be eligible during the next fiscal year but are not an obligation of the state. Any eligible costs incurred by a political subdivision which are not funded due to a lack of funds shall not be considered an obligation of the state. In disbursing funds under this section, the director shall make efforts to ensure equal geographic distribution throughout the state and may deny reimbursements in order to accomplish this goal.

(6) The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 13-2042.01 shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(7) The council shall adopt and promulgate rules and regulations for the distribution of grants under subsection (6) of this section from the proceeds of the fees imposed by this section to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The fees collected pursuant to this section shall not be used as grant proceeds to fund landfill closure site assessments, closure, monitoring, or investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy

established in section 13-2018, the proposed amount of local matching funds, and community need.

Source: Laws 1992, LB 1257, § 42; Laws 1994, LB 1207, § 11; Laws 1997, LB 495, § 2; Laws 1999, LB 592, § 1; Laws 2001, LB 128, § 1; Laws 2003, LB 143, § 8; Laws 2004, LB 916, § 1.

13-2042.01. Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations. (1) The Department of Environmental Quality shall rebate to the municipality or county of origin ten cents of the disposal fee required by section 13-2042 for each six cubic yards of uncompacted solid waste, for each three cubic yards of compacted solid waste, or for each ton of solid waste disposed of at landfills regulated by the department and originating in a municipality or county with a purchasing policy approved by the department. The fee shall be rebated quarterly on or before the thirtieth day after receipt of a quarterly report from the municipality or county of origin.

(2) Any municipality or county may apply to the department for the rebate authorized in subsection (1) of this section if the municipality or county has a written purchasing policy in effect requiring a preference for purchasing products, materials, or supplies which are manufactured or produced from recycled material. The policy shall provide that the preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality as determined by the municipality or county. Upon receipt of an application, the Department of Environmental Quality shall submit the application to the materiel division of the Department of Administrative Services for review. The materiel division shall review the application for compliance with this section and any rules and regulations adopted pursuant to this section and to determine the probable effectiveness in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material. The materiel division shall provide a report of its findings to the Department of Environmental Quality within thirty days after receiving the review request. The Department of Environmental Quality shall approve the application or suggest modifications to the application within sixty days after receiving the application based on the materiel division's report, any analysis by the Department of Environmental Quality, and any factors affecting compliance with this section or the rules and regulations adopted pursuant to this section.

(3) A municipality or county shall file a report complying with the rules and regulations adopted pursuant to this section with the Department of Environmental Quality before April 1 of each year documenting purchasing practices for the past calendar year in order to continue receiving the rebate. The report shall include, but not be limited to, quantities of products, materials, or supplies purchased which were manufactured or produced from recycled material. The department shall provide copies of each report to the materiel division in a timely manner. If the department determines that a municipality or county is not following the purchasing policy presented in the approved application or that the purchasing policy presented in the approved application is not effective in assuring that a preference is given to products, materials, or supplies

which are manufactured or produced from recycled material, the department shall suspend the rebate until it determines that the municipality or county is giving a preference to products, materials, or supplies which are manufactured or produced from recycled material pursuant to a written purchasing policy approved by the department subsequent to the suspension. The materiel division may make recommendations to the department regarding suspensions and reinstatements of rebates.

(4) Any suspension of the rebate or denial of an application made under this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) The council shall adopt and promulgate rules and regulations establishing criteria for application procedures, for accepting and denying applications, for annual and quarterly reporting requirements, and for suspending and reinstating the rebate. The materiel division shall recommend to the council criteria for accepting and denying applications and for suspending and reinstating the rebate. The materiel division may make other recommendations to the council regarding rules and regulations authorized under this section. The Department of Administrative Services may adopt and promulgate rules and regulations establishing procedures for reviewing applications and for annual and quarterly reports.

Source: Laws 1994, LB 1207, § 3.

13-2043. Construction of act. Nothing in the Integrated Solid Waste Management Act shall be construed to apply to any operations or activities regulated by the Nebraska Oil and Gas Conservation Commission or to operations or activities regulated under subsection (10) of section 81-1505.

Source: Laws 1992, LB 1257, § 43.

PAUNCH MANURE PLANT RESTRICTION

14-818. Paunch manure, rendering, or sewage plant; refuse area; establish; residential area; restriction. After July 19, 1980, no person shall establish paunch manure, rendering, or sewage treatment plant or facility, or an area where refuse, garbage, or rubbish is disposed of within three thousand three hundred feet of a residential area in a metropolitan-class city. For purposes of this section residential area shall mean an area designated as residential under the zoning authority of the city.

Source: Laws 1980, LB 853, § 15.

GARBAGE DISPOSAL
(Applicable to cities of the first or second class and villages)

19-2101. Garbage disposal plants, systems and solid waste disposal areas; construction and maintenance; acquisition; eminent domain. Cities of the first class, cities of the second class and villages shall have the power to purchase, construct, maintain and improve garbage disposal plants, systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of their respective municipalities and the inhabitants thereof, and are hereby authorized and empowered to lease or to take land in fee within their corporate limits or without their corporate limits by

donation, gift, devise, purchase or appropriation for rights-of-way and for construction and operation of such a disposal plant, system or solid waste disposal area.

Source: Laws 1947, c. 54, § 1, p. 183; Laws 1961, c. 60, § 1, p. 219; Laws 1969, c. 117, § 1, p. 533.

19-2102. Garbage disposal plants, systems and solid waste disposal areas; tax; when authorized. The cost thereof may be defrayed by the levy of a tax not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year or, when such tax is insufficient for such purpose, by the issuance of bonds of the municipality.

Source: Laws 1947, c. 54, § 2, p. 183; Laws 1953, c. 287, § 37, p. 952; Laws 1979, LB 187, § 83; Laws 1992, LB 719A, § 84.

19-2103. Garbage disposal plants, systems and solid waste disposal areas; issuance of bonds; limitation on amount. The question of issuing bonds for the purpose herein contemplated shall be submitted to the electors at any election held for that purpose, after not less than thirty days' notice thereof shall have been given by publication in some newspaper published and of general circulation in such municipality or, if no newspaper is published therein, then by posting in five or more public places therein. Such bonds may be issued only when a majority of the electors voting on the question approve their issuance. The bonds shall bear interest payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction, installation or purchase of a garbage disposal plant, system or solid waste disposal area shall not exceed five percent of the taxable value of the property within such municipality as shown by the last annual assessment.

Source: Laws 1947, c. 54, § 3, p. 183; Laws 1969, c. 117, § 2, p. 534; Laws 1969, c. 51, § 74, p. 321.

19-2104. Garbage disposal plants, systems and solid waste disposal areas; tax levy to pay bonds. The council or board shall levy annually a sufficient tax to maintain and operate such system, plant or solid waste disposal area and to provide for the payment of the interest on and principal of any bonds that may have been issued as herein provided.

Source: Laws 1947, c. 54, § 4, p. 184; Laws 1969, c. 117, § 3, p. 534.

19-2105. Garbage disposal plants, systems and solid waste disposal areas; contracts. The council or board of such municipality may also make and enter into a contract or contracts with any person, firm or corporation for the construction, maintenance or operation of a garbage disposal plant, system or solid waste disposal area.

Source: Laws 1947, c. 54, § 5, p. 184; Laws 1969, c. 117, § 4, p. 535.

19-2106. Garbage disposal; management and operation; rates and charges; collections; penalties. When such system shall have been established, the municipality

may provide by ordinance for the management and operation thereof, the rates to be charged for such service, including collection and disposal, the manner of payment and collection thereof and prescribe penalties for the violation of such ordinance, and do whatever is necessary to protect the general health in the matter of removal and disposal of garbage.

Source: Laws 1947, c. 54, § 6, p. 184; Laws 1972, LB 893, § 1.

19-2111. Garbage disposal; construction of section; existing facilities; zoning. Nothing in section 19-2101 shall be construed so as to apply to or affect existing garbage disposal facilities or existing county zoning.

Source: Laws 1961, c. 60, § 6, p. 221; Laws 1992, LB 1257, § 66.

ENVIRONMENTAL AUDITS

25-21,254. Legislative intent. The Legislature finds and declares that protection of the environment is enhanced by the public's voluntary compliance with environmental requirements and the local counterpart or extension of such requirements and that the public will benefit from incentives to identify and remedy environmental compliance issues. The Legislature further declares that it is in the public interest to encourage such activities by assuring limited protection of environmental audit findings and of providing fair treatment of those who report environmental audit findings to regulatory authorities.

Source: Laws 1998, LB 395, § 1.

25-21,255. Terms, defined. For the purposes of sections 25-21,254 to 25-21,264:

(1) Environmental audit means any document dated and labeled as a confidential environmental audit and prepared pursuant to a specific written directive to review compliance with an environmental requirement or requirements, including any report, finding, communication, or opinion or any draft of a report, finding, communication, or opinion, related to and prepared as a result of a voluntary self-evaluation that is done in good faith;

(2) Environmental requirement means an environmental protection requirement contained in (a) the Environmental Protection Act, the Integrated Solid Waste Management Act, the Nebraska Chemigation Act, the Pesticide Act, the Petroleum Products and Hazardous Substances Storage and Handling Act, sections 81-1575 to 81-1577, or federal law, a rule or regulation adopted and promulgated pursuant to such acts, sections, or laws, a permit or order issued pursuant to such acts, sections, or laws, or an agreement entered into or court order issued pursuant to any of the foregoing or (b) an ordinance or other legally binding requirement of a local governmental unit under authority granted by state or federal law relating to environmental protection;

(3) Person means any individual, partnership, limited liability company, association, public or private corporation, trustee, receiver, assignee, agent, municipality, other governmental subdivision, public agency, other legal entity, or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity; and

(4) Voluntary self-evaluation means a self-initiated assessment, audit, or review, not otherwise expressly required by environmental requirements, that is performed by any person for himself, herself, or itself, either by an employee of such person assigned

the responsibility of performing such assessment, audit, or review or by a consultant engaged by such person specifically for the purpose of performing such assessment, audit, or review to determine whether such person is in compliance with environmental requirements.

Source: Laws 1998, LB 395, § 2.

25-21,256. Environmental audit; use as evidence prohibited; exceptions. (1) An environmental audit prepared under sections 25-21,254 to 25-21,264 is not admissible as evidence in any civil or administrative proceeding or enforcement proceedings under local ordinances, except (a) as provided in sections 25-21,257 to 25-21,259, (b) an agency having regulatory authority may obtain and review such audit for the limited purposes of determining if the audit exists and if any exceptions to the liability provisions of sections 25-21,254 to 25-21,264 exist with respect to the audit, (c) with respect to the generation, storage, transport, or disposal of radioactive material, low-level radioactive waste, and high-level radioactive waste as defined in section 71-3503, and (d) no protections are given under this section with respect to violations which would likely result or have resulted in a significant adverse impact on the public health or the environment.

(2) Neither any person who conducted the audit nor any person to whom the audit results are disclosed can be compelled to testify regarding any matter which was the subject of the audit and which is addressed in the environmental audit.

Source: Laws 1998, LB 395, § 3.

25-21,257. Environmental audit; use as evidence; waiver. Except as provided in section 25-21,259, the person for whom the environmental audit was prepared, whether the audit was prepared by the person, by an employee of the person, or by a consultant hired by the person, may waive the protection provided in section 25-21,256 only by an express waiver.

Source: Laws 1998, LB 395, § 4.

25-21,258. Environmental audit; use as evidence; exceptions. The protection created by section 25-21,256 does not apply to:

(1) Documents or information required to be developed, maintained, or reported pursuant to any environmental requirements;

(2) Documents or other information required to be available or furnished to a regulatory agency pursuant to any environmental requirements or any other law;

(3) Documents or information maintained or developed relating to grants or other financial assistance sponsored by the state or federal government;

(4) Information obtained by a regulatory agency through observation, inspection, sampling, or monitoring pursuant to an environmental requirement; or

(5) Information obtained through any source independent of the environmental audit.

Source: Laws 1998, LB 395, § 6.

25-21,259. Environmental audit; admissible as evidence; when. (1) An environmental audit is admissible as evidence in any civil or administrative proceeding or enforcement proceedings under local ordinances if a court of record determines that:

(a)(i) The environmental audit shows evidence that the person for which the environmental audit was prepared is not or was not in compliance with an environmental requirement; and

(ii) The person did not initiate, after the audit, appropriate efforts to achieve compliance with the environmental requirement or complete in good faith any necessary permit application promptly after the noncompliance with the environmental requirement was discovered and, as a result, the person did not or will not achieve compliance with the environmental requirement or complete the necessary permit application within a reasonable amount of time; or

(b) The protection provided in section 25-21,256 is being asserted for a fraudulent purpose or the environmental audit was prepared in order to avoid disclosure of information in an investigative, administrative, or judicial proceeding that was underway, that was imminent, or for which the person had been provided written notification that an investigation into a specific violation had been initiated; or

(c) The information contained in the environmental audit shows (i) violations which would likely result in or have resulted in a significant adverse impact on the public health or the environment or (ii) water contamination.

(2) For the purposes of subdivision (1)(a) of this section, if the evidence shows noncompliance with more than one environmental requirement by a person, the person may demonstrate to the court that appropriate efforts to achieve compliance were or are being taken by instituting a comprehensive program that establishes a phased schedule of actions to be taken to bring the person into compliance with all of such environmental requirements.

Source: Laws 1998, LB 395, § 5.

25-21,260. Voluntary self-evaluation; disclose possible violations. A person performing a voluntary self-evaluation may disclose in writing a possible violation of an environmental requirement to an agency having regulatory authority showing:

(1) A description of the possible violation;

(2) The date of discovery of the possible violation and, if known, the date the possible violation occurred; and

(3) Actions taken to correct the possible violation and, if applicable, a schedule to achieve compliance.

Source: Laws 1998, LB 395, § 7.

25-21,261. Voluntary self-evaluation; disclosure; effect; exceptions. (1) If disclosure is made pursuant to section 25-21,260 and the agency having regulatory authority has approved the action taken or the schedule to achieve compliance, as appropriate, which approval shall not be unreasonably withheld, the person is not liable for civil penalties unless (a) the disclosure was not made within sixty days after knowledge of the information disclosed was obtained by the person and was not disclosed to the agency having regulatory authority prior to the agency having knowledge of the violation contained in the disclosure, (b) the disclosure did not arise out of a

voluntary self-evaluation, (c) the person making the disclosure did not initiate the appropriate efforts to achieve compliance, did not pursue compliance with due diligence, and did not correct the noncompliance as soon as reasonably practicable after discovery of the violation during the course of the environmental audit, (d) the person making the disclosure did not cooperate with the agency having regulatory authority with regard to the violation disclosed regarding investigation of the issues identified in the disclosure, (e) the violation was due to a lack of good faith efforts to understand or comply with environmental requirements, (f) the violation was knowing and willful, or (g) the violation would likely result or has resulted in significant adverse impact on the public health or the environment. If the noncompliance under subdivision (c) of this subsection is the failure to obtain a permit, appropriate efforts to correct the noncompliance may be demonstrated by the submission of a complete permit application within a reasonable time and a permit for such activities is subsequently issued by the agency.

(2) This section does not apply to violations of the terms of any agreement entered into or court order or administrative order issued pursuant to an environmental requirement, including, but not limited to, consent decrees or plea agreements.

(3) This section does not preclude the agency having regulatory authority from seeking the recovery of any economic benefit resulting from noncompliance with an environmental requirement.

(4) For purposes of this section, (a) if a person is required, under an environmental requirement, under a specific permit condition, or under an order issued by the agency, to make a disclosure to an agency having regulatory authority with regard to the violation disclosed, the disclosure is not voluntary with respect to that agency, and (b) repeat violations or closely related additional violations within five years after a previous violation shall be prima facie evidence of a lack of good faith efforts to comply with environmental requirements.

Source: Laws 1998, LB 395, § 8.

25-21,262. Regulatory authority; sections; how construed. Except as specifically provided in sections 25-21,254 to 25-21,261, such sections do not affect the regulatory authority that any department or agency has to require any action associated with the information disclosed.

Source: Laws 1998, LB 395, § 9.

25-21,263. Privileges; sections; how construed. Sections 25-21,254 to 25-21,262 do not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

Source: Laws 1998, LB 395, § 10.

25-21,264. Venue. The district court of the county in which the facility is located or, if all parties agree, the district court of Lancaster County shall have jurisdiction of actions brought under section 25-21,259.

Source: Laws 1998, LB 395, § 11.

NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT
(Selected Statutes Only)

46-613. Ground water; declaration of policy; preference in use. Preference in the use of ground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, (1) domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations and (2) agricultural purposes shall include, but not be limited to, aquaculture as defined in section 2-3804.01.

Source: Laws 1957, c. 199, § 1, p. 701; Laws 1963, c. 279, § 1, p. 835; Laws 1995, LB 871, § 4.

46-701. Act, how cited. Sections 46-701 to 46-753 shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Source: Laws 1975, LB 577, § 24; Laws 1981, LB 146, § 12; Laws 1982, LB 375, § 22; Laws 1984, LB 1071, § 15; Laws 1986, LB 894, § 31; Laws 1991, LB 51, § 8; Laws 1994, LB 480, § 27; R.S.Supp.,1994, § 46-674; Laws 1996, LB 108, § 7; R.S.Supp.,2003, § 46-656.01; Laws 2003, LB 619, § 9; Laws 2004, LB 962, § 41.

46-702. Declaration of intent and purpose. The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient for all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent practicable consistent with beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper

use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

Source: Laws 1975, LB 577, § 1; Laws 1981, LB 146, § 4;
Laws 1982, LB 375, § 1; Laws 1983, LB 378, § 1;
Laws 1984, LB 1071, § 1; Laws 1986, LB 894, § 20;
Laws 1993, LB 3, § 7; R.S.1943, (1993), § 46-656;
Laws 1996, LB 108, § 8; Laws 2003, LB 619, § 10;
R.S.Supp.,2003, § 46-656.02; Laws 2004, LB 962, § 42.

46-703. Legislative findings. The Legislature further finds:

(1) The management, conservation, and beneficial use of hydrologically connected ground water and surface water are essential to the continued economic prosperity and well-being of the state, including the present and future development of agriculture in the state;

(2) Hydrologically connected ground water and surface water may need to be managed differently from unconnected ground water and surface water in order to permit equity among water users and to optimize the beneficial use of interrelated ground water and surface water supplies;

(3) Natural resources districts already have significant legal authority to regulate activities which contribute to declines in ground water levels and to nonpoint source contamination of ground water and are the preferred entities to regulate, through ground water management areas, ground water related activities which are contributing to or are, in the reasonably foreseeable future, likely to contribute to conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;

(4) The Legislature recognizes that ground water use or surface water use in one natural resources district may have adverse affects on water supplies in another district or in an adjoining state. The Legislature intends and expects that each natural resources district within which water use is causing external impacts will accept responsibility for ground water management in accordance with the Nebraska Ground Water Management and Protection Act in the same manner and to the same extent as if the impacts were contained within that district;

(5) The Department of Natural Resources is responsible for regulation of surface water resources and local surface water project sponsors are responsible for much of the structured irrigation utilizing surface water supplies, and these entities should be responsible for regulation of surface water related activities which contribute to conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;

(6) All involved natural resources districts, the department, and surface water project sponsors should cooperate and collaborate on the identification and implementation of management solutions to conflicts between ground water users and

surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, and reaches; and

(7) An Interrelated Water Review Board is needed to resolve any conflicts between the department and the involved natural resources districts concerning the content, implementation, or enforcement of integrated management plans for fully appropriated and overappropriated river basins, subbasins, and reaches.

Source: Laws 1996, LB 108, § 11; Laws 2000, LB 900, § 189; R.S.Supp.,2002, § 46-656.05; Laws 2004, LB 962, § 43.

46-704. Management area; legislative findings. The Legislature also finds that:

(1) The levels of nitrate nitrogen and other contaminants in ground water in certain areas of the state are increasing;

(2) Long-term solutions should be implemented and efforts should be made to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards;

(3) Agriculture has been very productive and should continue to be an important industry to the State of Nebraska;

(4) Natural resources districts have the legal authority to regulate certain activities and, as local entities, are the preferred regulators of activities which may contribute to ground water contamination in both urban and rural areas;

(5) The Department of Environmental Quality should be given authority to regulate sources of contamination when necessary to prevent serious deterioration of ground water quality;

(6) The powers given to districts and the Department of Environmental Quality should be used to stabilize, reduce, and prevent the increase or spread of ground water contamination; and

(7) There is a need to provide for the orderly management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as management areas.

Source: Laws 1986, LB 894, § 1; Laws 1993, LB 3, § 14; R.S.1943, (1993), § 46-674.02; Laws 1996, LB 108, § 9; R.S.1943, (1998), § 46-656.03; Laws 2004, LB 962, § 44.

46-706. Terms, defined. For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Nebraska Ground Water Management and Protection Act, and sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

(1) Person means a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States;

(2) Ground water means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land;

(3) Contamination or contamination of ground water means nitrate nitrogen or other material which enters the ground water due to action of any person and causes

degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses;

(4) District means a natural resources district operating pursuant to Chapter 2, article 32;

(5) Illegal water well means (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act, (b) any water well not in compliance with rules and regulations adopted and promulgated pursuant to the act, (c) any water well not properly registered in accordance with sections 46-602 to 46-604, or (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws;

(6) To commence construction of a water well means the beginning of the boring, drilling, jetting, digging, or excavating of the actual water well from which ground water is to be withdrawn;

(7) Management area means any area so designated by a district pursuant to section 46-712 or 46-718, by the Director of Environmental Quality pursuant to section 46-725, or by the Interrelated Water Review Board pursuant to section 46-719. Management area includes a control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan means a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to section 46-711;

(9) Ground water reservoir life goal means the finite or infinite period of time which a district establishes as its goal for maintenance of the supply and quality of water in a ground water reservoir at the time a ground water management plan is adopted;

(10) Board means the board of directors of a district;

(11) Acre-inch means the amount of water necessary to cover an acre of land one inch deep;

(12) Subirrigation or subirrigated land means the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

(13) Best management practices means schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or effect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices relating to contamination of ground water may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

(14) Point source means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is or may be discharged;

(15) Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

(16) Rotation means a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

(17) Water well has the same meaning as in section 46-601.01;

(18) Surface water project sponsor means an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6;

(19) Beneficial use means that use by which water may be put to use to the benefit of humans or other species;

(20) Consumptive use means the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use is lawfully made;

(21) Dewatering well means a well constructed and used solely for the purpose of lowering the ground water table elevation;

(22) Emergency situation means any set of circumstances that requires the use of water from any source that might otherwise be regulated or prohibited and the agency, district, or organization responsible for regulating water use from such source reasonably and in good faith believes that such use is necessary to protect the public health, safety, and welfare, including, if applicable, compliance with federal or state water quality standards;

(23) Good cause shown means a reasonable justification for granting a variance for a consumptive use of water that would otherwise be prohibited by rule or regulation and which the granting agency, district, or organization reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a variance is sought;

(24) Historic consumptive use means the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

(25) Monitoring well means a water well that is designed and constructed to provide ongoing hydrologic or water quality information and is not intended for consumptive use;

(26) Order, except as otherwise specifically provided, includes any order required by the Nebraska Ground Water Management and Protection Act, by rule or regulation, or by a decision adopted by a district by vote of the board of directors of the district taken at any regularly scheduled or specially scheduled meeting of the board;

(27) Overall difference between the current and fully appropriated levels of development means the extent to which existing uses of hydrologically connected surface water and ground water and conservation activities result in the water supply available for purposes identified in subsection (3) of section 46-713 to be less than the water supply available if the river basin, subbasin, or reach had been determined to be fully appropriated in accordance with section 46-714;

(28) Test hole means a hole designed solely for the purposes of obtaining information on hydrologic or geologic conditions; and

(29) Variance means (a) an approval to deviate from a restriction imposed under subsection (1), (2), (9), or (10) of section 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable.

Source: Laws 1975, LB 577, § 2; Laws 1980, LB 643, § 9;
Laws 1981, LB 146, § 5; Laws 1981, LB 325, § 1;
Laws 1982, LB 375, § 2; Laws 1983, LB 378, § 2;
Laws 1984, LB 1071, § 2; Laws 1986, LB 886, § 5;
Laws 1986, LB 894, § 21; Laws 1991, LB 51, § 1;
Laws 1993, LB 3, § 8; Laws 1993, LB 121, § 279;
Laws 1993, LB 131, § 24; Laws 1993, LB 439, § 1;
Laws 1993, LB 789, § 5; R.S.1943, (1993), § 46-657;
Laws 1996, LB 108, § 13; Laws 2000, LB 900, § 190;
Laws 2001, LB 135, § 1; Laws 2003, LB 93, § 1;
R.S.Supp.,2003, § 46-656.07; Laws 2004, LB 962, § 46;
Laws 2006, LB 1226, § 21.

46-707. Natural resources district; powers; enumerated. Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(1) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(2) Require such reports from ground water users as may be necessary;

(3) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(4) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(5) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

(6) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

(7) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this section, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 46-743.

Source: Laws 1975, LB 577, § 8; Laws 1979, LB 26, § 2; Laws 1982, LB 375, § 18; Laws 1984, LB 1071, § 6; Laws 1986, LB 894, § 24; Laws 1993, LB 3, § 10; Laws 1993, LB 131, § 29; Laws 1995, LB 871, § 6; R.S.Supp.,1995, § 46-663; Laws 1996, LB 108, § 14; R.S.1943, (1998), § 46-656.08; Laws 2004, LB 962, § 47.

46-709. Ground water management plan; required; contents. Each district shall maintain a ground water management plan based upon the best available information and shall submit amendments to such plan to the Director of Natural Resources for review and approval.

The plan shall include, but not be limited to, the identification to the extent possible of:

(1) Ground water supplies within the district including transmissivity, saturated thickness maps, and other ground water reservoir information, if available;

(2) Local recharge characteristics and rates from any sources, if available;

(3) Average annual precipitation and the variations within the district;

(4) Crop water needs within the district;

(5) Current ground water data-collection programs;

(6) Past, present, and potential ground water use within the district;

(7) Ground water quality concerns within the district;

(8) Proposed water conservation and supply augmentation programs for the district;

(9) The availability of supplemental water supplies, including the opportunity for ground water recharge;

(10) The opportunity to integrate and coordinate the use of water from different sources of supply;

(11) Ground water management objectives, including a proposed ground water reservoir life goal for the district. For management plans adopted or revised after July 19, 1996, the ground water management objectives may include any proposed integrated management objectives for hydrologically connected ground water and surface water supplies but a management plan does not have to be revised prior to the adoption or implementation of an integrated management plan pursuant to section 46-718 or 46-719;

(12) Existing subirrigation uses within the district;

(13) The relative economic value of different uses of ground water proposed or existing within the district; and

(14) The geographic and stratigraphic boundaries of any proposed management area.

If the expenses incurred by a district preparing or amending a ground water management plan exceed twenty-five percent of the district's current budget, the district may make application to the Nebraska Resources Development Fund for assistance.

Each district's ground water management plan shall also identify, to the extent possible, the levels and sources of ground water contamination within the district, ground

water quality goals, long-term solutions necessary to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards, and practices recommended to stabilize, reduce, and prevent the occurrence, increase, or spread of ground water contamination.

Source: Laws 1982, LB 375, § 3; Laws 1983, LB 378, § 3;
Laws 1984, LB 1106, § 37; R.S.1943, (1993), § 46-673.01;
Laws 1996, LB 108, § 18; Laws 2000, LB 900, § 191;
Laws 2003, LB 619, § 12; R.S.Supp.,2003, § 46-656.12;
Laws 2004, LB 962, § 49.

46-711. Ground water management plan; director; review; duties. (1) The Director of Natural Resources shall review any ground water management plan or plan modification submitted by a district to ensure that the best available studies, data, and information, whether previously existing or newly initiated, were utilized and considered and that such plan is supported by and is a reasonable application of such information. If a management area is proposed and the primary purpose of the proposed management area is protection of water quality, the director shall consult with the Department of Environmental Quality regarding approval or denial of the management plan. The director shall consult with the Conservation and Survey Division of the University of Nebraska and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her specific findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

(2) If the Director of Natural Resources disapproves a ground water management plan, the district which submitted the plan shall, in order to establish a management area, submit to the director either the original or a revised plan with an explanation of how the original or revised plan addresses the issues raised by the director in his or her reasons for disapproval. Once a district has submitted an explanation pursuant to this section, such district may proceed to schedule a hearing pursuant to section 46-712.

Source: Laws 1982, LB 375, § 5; Laws 1986, LB 894, § 27;
Laws 1993, LB 3, § 12; R.S.1943, (1993), § 46-673.03;
Laws 1996, LB 108, § 20; Laws 2000, LB 900, § 192;
R.S.Supp.,2002, § 46-656.14; Laws 2004, LB 962, § 51.

46-712. Management area; establishment; when; hearing; notice; procedure; district; powers and duties. (1) A natural resources district may establish a ground water management area in accordance with this section to accomplish any one or more of the following objectives: (a) Protection of ground water quantity; (b) protection of ground water quality; or (c) prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.

(2) Prior to establishment by a district of a management area other than a management area being established in accordance with section 46-718, the district's management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of subsection (2) of section 46-711. If necessary to determine whether a management area should be designated, the district

may initiate new studies and data-collection efforts and develop computer models. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area. Notice of the hearing shall be published as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3)(a) Within ninety days after the hearing, the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect.

(b) If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt one or more controls authorized by section 46-739 to be utilized within the area in order to achieve the ground water management objectives specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

(c) The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(4) Modification of the boundaries of a district-designated management area or dissolution of such an area shall be in accordance with the procedures established in this section. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Hearings for modification of controls may be initiated as often as deemed necessary by the district, and such modifications may be accomplished using the procedure in this section.

(5) A district shall, prior to adopting or amending any rules or regulations for a management area, consult with any holders of permits for intentional or incidental underground water storage and recovery issued pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, or 46-297.

(6) If a ground water management area has been adopted by a district under this section that includes one or more controls authorized by subdivision (1)(f) or (1)(m) of section 46-739, the district may request the Department of Natural Resources to conduct an evaluation to determine if an immediate stay should be placed on the issuance of new surface water natural-flow appropriations in the area, river basin, subbasin, or reach of the management area, and the department may determine that the stay is in the public interest. The stay may include provisions for exceptions to be granted for beneficial uses as described in subsection (3) of section 46-714 or for a project that provides hydrological benefit to the area of the stay and may include provisions that the stay may be rescinded based on new or additional information that may become available.

Source: Laws 1982, LB 375, § 7; Laws 1986, LB 894, § 28; Laws 1991, LB 51, § 2; Laws 1993, LB 3, § 13; R.S.1943, (1993), § 46-673.05; Laws 1996, LB 108, § 25; Laws 1997, LB 188, § 1; Laws 2000, LB 900, § 195; R.S.Supp.,2002, § 46-656.19; Laws 2004, LB 962, § 52; Laws 2006, LB 1226, § 22.

46-721. Management area; reports required. Each state agency and political subdivision shall promptly report to the Department of Environmental Quality any information which indicates that contamination is occurring.

Source: Laws 1986, LB 894, § 2; Laws 1993, LB 3, § 15;
R.S.1943, (1993), § 46-674.03; Laws 1996, LB 108, § 41;
R.S.1943, (1998), § 46-656.35; Laws 2004, LB 962, § 61.

46-722. Management area; Department of Environmental Quality; conduct study; when; report. If, as a result of information provided pursuant to section 46-721 or studies conducted by or otherwise available to the Department of Environmental Quality and following preliminary investigation, the Director of Environmental Quality makes a preliminary determination (1) that there is reason to believe that contamination of ground water is occurring or likely to occur in an area of the state in the reasonably foreseeable future and (2) that the natural resources district or districts in which the area is located have not designated a management area or have not implemented adequate controls to prevent such contamination from occurring, the department shall, in cooperation with any appropriate state agency and district, conduct a study to determine the source or sources of the contamination and the area affected by such contamination and shall issue a written report within one year of the initiation of the study. During the study, the department shall consider the relevant water quality portions of the management plan developed by each district pursuant to sections 46-709 to 46-711, whether the district has designated a management area encompassing the area studied, and whether the district has adopted any controls for the area.

Source: Laws 1986, LB 894, § 3; Laws 1993, LB 3, § 16;
R.S.1943, (1993), § 46-674.04; Laws 1996, LB 108, § 42;
R.S.1943, (1998), § 46-656.36; Laws 2004, LB 962, § 62.

46-723. Management area; contamination; point source; Director of Environmental Quality; duties. If the Director of Environmental Quality determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are point sources, he or she shall expeditiously use the procedures authorized in the Environmental Protection Act to stabilize or reduce the level and prevent the increase or spread of such contamination.

Source: Laws 1986, LB 894, § 4; Laws 1993, LB 3, § 17;
R.S.1943, (1993), § 46-674.05; Laws 1996, LB 108, § 43;
R.S.1943, (1998), § 46-656.37; Laws 2004, LB 962, § 63.

46-724. Management area; contamination; not point source; Director of Environmental Quality; duties; hearing; notice. If the Director of Environmental Quality determines from the study conducted pursuant to section 46-722 that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environmental Quality shall consider whether to require the district which established the management area to adopt an action plan as provided in sections 46-725 to 46-729.

If the Director of Environmental Quality determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section 46-722, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services Regulation and Licensure, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Quality as he or she deems necessary, the director shall determine whether a management area shall be designated.

Source: Laws 1986, LB 894, § 5; Laws 1991, LB 51, § 9;
Laws 1993, LB 3, § 18; R.S.1943, (1993), § 46-674.06;
Laws 1996, LB 108, § 44; Laws 1996, LB 1044, § 260;
Laws 2000, LB 900, § 201; R.S.Supp.,2002, § 46-656.38;
Laws 2004, LB 962, § 64.

46-725. Management area; designation or modification of boundaries; adoption of action plan; considerations; procedures; order. (1) When determining whether to designate or modify the boundaries of a management area or to require a district which has established a management area, a purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director of Environmental Quality shall consider:

(a) Whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future;

(b) Whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water;

(c) Whether methods are available to stabilize or reduce the level of contamination;

(d) Whether, if a management area has been established which includes the affected area, the controls adopted by the district pursuant to section 46-739 as administered and enforced by the district are sufficient to address the ground water quality issues in the management area; and

(e) Administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environmental Quality determines that no such area should be established, he or she shall issue an order declaring that no management area shall be designated.

(3) If the Director of Environmental Quality determines that a management area shall be established, that the boundaries of an existing management area shall be modified, or that the district shall be required to adopt an action plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environmental Quality shall include the specific reasons for the creation of the management area or the requirement of such an action plan and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined or modified, the Director of Environmental Quality shall issue an order designating the area as a management area, specifying the modified boundaries of the management area, or requiring such an action plan. Such an order shall include a geographic and stratigraphic definition of the area. Such order shall be published in the manner provided in section 46-744.

Source: Laws 1986, LB 894, § 6; Laws 1991, LB 51, § 10; Laws 1993, LB 3, § 19; R.S.1943, (1993), § 46-674.07; Laws 1996, LB 108, § 45; R.S.1943, (1998), § 46-656.39; Laws 2004, LB 962, § 65.

46-726. Management area; action plan; preparation by district; when; hearing; notice; publication. (1) Within one hundred eighty days after the designation of a management area or the requiring of an action plan for a management area, a purpose of which is protection of water quality, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a management area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district. Notice of the hearing shall be given as provided in section 46-743, and the hearing shall be conducted in accordance with such section.

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the Department of Environmental Quality. Notice of the district's order adopting an action plan shall be published as required by section 46-744.

Source: Laws 1986, LB 894, § 7; Laws 1991, LB 51, § 11; R.S.1943, (1993), § 46-674.08; Laws 1996, LB 108, § 46; Laws 2000, LB 900, § 202; R.S.Supp.,2002, § 46-656.40; Laws 2004, LB 962, § 66.

46-727. Management area; action plan; contents. An action plan filed by a district pursuant to section 46-726 shall include the specifics of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level or prevent the increase or spread of ground water contamination. The action plan shall include one or more of the controls authorized by section 46-739.

Source: Laws 1986, LB 894, § 8; Laws 1991, LB 51, § 12;
R.S.1943, (1993), § 46-674.09; Laws 1996, LB 108, § 47;
R.S.1943, (1998), § 46-656.41; Laws 2004, LB 962, § 67.

46-728. Management area; adoption or amendment of action plan; considerations; procedures. (1) In adopting or amending an action plan authorized by subsection (2) of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or the requirement of an action plan for a management area or will improve the administration of the area.

(2) The Director of Environmental Quality shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If the director denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days after denial of its original action plan to the director for approval subject to section 46-731.

Source: Laws 1986, LB 894, § 9; Laws 1991, LB 51, § 13;
Laws 1993, LB 3, § 20; R.S.1943, (1993), § 46-674.10;
Laws 1996, LB 108, § 48; R.S.1943, (1998), § 46-656.42;
Laws 2004, LB 962, § 68.

46-729. Management area; district publish order adopted. Following approval of the action plan by the Director of Environmental Quality, the district shall cause a copy of the order adopted pursuant to section 46-728 to be published in the manner provided in section 46-744.

Source: Laws 1986, LB 894, § 10; Laws 1993, LB 3, § 21;
R.S.1943, (1993), § 46-674.11; Laws 1996, LB 108, § 49;
R.S.1943, (1998), § 46-656.43; Laws 2004, LB 962, § 69.

46-730. Management area; district; duties. Each district in which a management area has been designated or an action plan for a management area has been required pursuant to section 46-725 shall, in cooperation with the Department of Environmental Quality, establish a program to monitor the quality of the ground water in the area and

shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

Source: Laws 1986, LB 894, § 17; Laws 1991, LB 51, § 16;
Laws 1993, LB 3, § 27; R.S.1943, (1993), § 46-674.18;
Laws 1996, LB 108, § 50; R.S.1943, (1998), § 46-656.44;
Laws 2004, LB 962, § 70.

46-731. Management area; director specify controls; when; powers and duties; hearing. (1) The power to specify controls authorized by section 46-739 shall vest in the Director of Environmental Quality if (a) at the end of one hundred eighty days following the designation of a management area or the requiring of an action plan for a management area pursuant to section 46-725, a district encompassed in whole or in part by the management area has not completed and adopted an action plan, (b) a district does not submit a revised action plan within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the director.

(2) If the power to specify controls in such a management area is vested in the Director of Environmental Quality, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior to the adoption of controls. Notice of any such additional hearings shall be given in the manner provided in section 46-743. The enforcement of controls adopted pursuant to this section shall be the responsibility of the Department of Environmental Quality.

Source: Laws 1986, LB 894, § 11; Laws 1991, LB 51, § 14;
Laws 1993, LB 3, § 22; R.S.1943, (1993), § 46-674.12;
Laws 1996, LB 108, § 51; R.S.1943, (1998), § 46-656.45;
Laws 2004, LB 962, § 71.

46-732. Management area; controls; duration; amendment of plan. The controls in the action plan approved by the Director of Environmental Quality pursuant to section 46-728 shall be exercised by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination. An action plan may be amended by the same method utilized in the adoption of the action plan.

Source: Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15;
Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14;
Laws 1996, LB 108, § 53; R.S.1943, (1998), § 46-656.46;
Laws 2004, LB 962, § 73.

46-733. Management area; removal of designation or requirement of action plan; modification of boundaries; when. A district may petition the Director of Environmental Quality to remove the director's designation of the area as a management area or the requirement of an action plan for a management area or to modify the boundaries of a management area designated pursuant to section 46-725. If the director

determines that the level of contamination in a management area has stabilized at or been reduced to a level which is not detrimental to beneficial uses of ground water, he or she may remove the designation or action plan requirement or modify the boundaries of the management area.

Source: Laws 1986, LB 894, § 13; Laws 1991, LB 51, § 15; Laws 1993, LB 3, § 24; R.S.1943, (1993), § 46-674.14; Laws 1996, LB 108, § 53; R.S.1943, (1998), § 46-656.47; Laws 2004, LB 962, § 73.

46-734. Management area; Environmental Quality Council; adopt rules and regulations. The Environmental Quality Council shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties under sections 46-721 to 46-733.

Source: Laws 1986, LB 894, § 15; Laws 1993, LB 3, § 26; R.S.1943, (1993), § 46-674.16; Laws 1996, LB 108, § 54; R.S.1943, (1998), § 46-656.48; Laws 2004, LB 962, § 74.

46-739. Management area; controls authorized; procedure. (1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) It may allocate the amount of ground water that may be withdrawn by ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section 46-740;

(f) It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) It may impose mandatory educational requirements designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) It may require district approval of (i) transfers of ground water off the land where the water is withdrawn or (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section. Such

approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to July 16, 2004, or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare;

(l) It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;

(m) It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and

(n) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections 46-740 and 46-741, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or will improve the administration of the area.

(3) Upon request by the district or when any of the controls being proposed are for the purpose of integrated management of hydrologically connected ground water and surface water, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which

differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. Except as otherwise provided in this section, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells either permitted or constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells either permitted or constructed on or after the designation date or any other later date or dates established by the district. Permits for construction of new wells not completed by the date of the determination of fully appropriated shall be subject to any conditions imposed by the applicable natural resources district.

(c) For a management area in a river basin or part of a river basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision (1)(m) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section 46-712, regarding the controls before implementing them.

(8) In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and

perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

Source: Laws 1975, LB 577, § 11; Laws 1978, LB 217, § 2;
Laws 1979, LB 26, § 4; Laws 1980, LB 643, § 13;
Laws 1981, LB 146, § 9; Laws 1982, LB 375, § 19;
Laws 1983, LB 506, § 1; Laws 1983, LB 23, § 7;
Laws 1984, LB 1071, § 8; Laws 1986, LB 894, § 25;
Laws 1993, LB 131, § 30; R.S.1943, (1993), § 46-666;
Laws 1996, LB 108, § 31; Laws 1997, LB 877, § 6;
Laws 2000, LB 900, § 196; Laws 2001, LB 135, § 2;
Laws 2001, LB 667, § 9; R.S.Supp.,2002, § 46-656.25;
Laws 2004, LB 962, § 79; Laws 2006, LB 1226, § 27.

46-746. Violations; civil penalty. (1) Any person who violates any cease and desist order issued by a district pursuant to section 46-707 or any controls, rules, or regulations adopted by a natural resources district relating to a management area shall be subject to the imposition of penalties imposed through the controls adopted by the district, including, but not limited to, having any allocation of water granted or irrigated acres certified by the district reduced in whole or in part. Before a district takes any action, notice and hearing shall be provided to such person.

(2) Any person who violates any of the provisions of sections 46-721 to 46-733 for which a penalty is not otherwise provided, other than the requirements imposed on a district, the Director of Natural Resources, or the Department of Natural Resources, shall be subject to a civil penalty of not more than five hundred dollars. Each day of continued violation shall constitute a separate offense.

Source: Laws 1986, LB 894, § 16; R.S.1943, (1993), § 46-674.17;
Laws 1996, LB 108, § 69; Laws 2000, LB 900, § 216;
R.S.Supp.,2002, § 46-656.63; Laws 2004, LB 962, § 86.

46-747. Hearings; subject to review. All hearings conducted pursuant to the Nebraska Ground Water Management and Protection Act shall be of record and available for review.

Source: Laws 1975, LB 577, § 13; Laws 1984, LB 1071, § 10;
R.S.1943, (1993), § 46-668; Laws 1996, LB 108, § 70;
R.S.1943, (1998), § 46-656.64; Laws 2004, LB 962, § 87.

46-749. Administration of act; compliance with other laws. In the administration of the Nebraska Ground Water Management and Protection Act, all actions of the Director of Environmental Quality, the Director of Natural Resources, and the districts shall be consistent with the provisions of section 46-613.

Source: Laws 1975, LB 577, § 16; Laws 1984, LB 1071, § 13;
R.S.1943, (1993), § 46-671; Laws 1996, LB 108, § 71;
Laws 2000, LB 900, § 217; R.S.Supp.,2002, § 46-656.65;
Laws 2004, LB 962, § 89.

46-750. Appeal; procedure. Any person aggrieved by any order of the district, the Director of Environmental Quality, or the Director of Natural Resources issued pursuant to the Nebraska Ground Water Management and Protection Act may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1975, LB 577, § 14; Laws 1984, LB 1071, § 11; Laws 1988, LB 352, § 78; R.S.1943, (1993), § 46-669; Laws 1996, LB 108, § 72; Laws 2000, LB 900, § 218; R.S.Supp.,2002, § 46-656.66; Laws 2004, LB 962, § 90.

NEBRASKA CHEMIGATION ACT

46-1101. Act, how cited. Sections 46-1101 to 46-1148 shall be known and may be cited as the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 1; Laws 1988, LB 1046, § 1.

46-1102. Legislative findings. The Legislature finds that the use of chemigation throughout the state is increasing and that, although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water. The Legislature also finds that complete information as to the occurrences and use of chemigation in this state is essential to the development of a sound state water management policy.

For these reasons, the Legislature deems it necessary to provide the natural resources districts and the Department of Environmental Quality with the authority to document, monitor, regulate, and enforce chemigation practices in Nebraska.

Source: Laws 1986, LB 284, § 2; Laws 1993, LB 3, § 28.

46-1103. Definitions, sections found. For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 46-1104 to 46-1116 shall apply.

Source: Laws 1986, LB 284, § 3.

46-1104. Applicator, defined. Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.

Source: Laws 1986, LB 284, § 4.

46-1105. Chemical, defined. Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.

Source: Laws 1986, LB 284, § 5.

46-1106. Chemigation, defined. Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an onfarm irrigation distribution system.

Source: Laws 1986, LB 284, § 6.

46-1107. Council, defined. Council shall mean the Environmental Quality Council.

Source: Laws 1986, LB 284, § 7; Laws 1993, LB 3, § 29.

46-1108. Department, defined. Department shall mean the Department of Environmental Quality.

Source: Laws 1986, LB 284, § 8; Laws 1993, LB 3, § 30.

46-1109. Director, defined. Director shall mean the Director of Environmental Quality.

Source: Laws 1986, LB 284, § 9; Laws 1993, LB 3, § 31.

46-1110. District, defined. District shall mean a natural resources district created pursuant to Chapter 2, article 32.

Source: Laws 1986, LB 284, § 10.

46-1111. Fertilizer, defined. Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

Source: Laws 1986, LB 284, § 11.

46-1112. Injection location, defined. Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.

Source: Laws 1986, LB 284, § 12.

46-1113. Irrigation distribution system, defined. Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

Source: Laws 1986, LB 284, § 13.

46-1114. Open discharge system, defined. Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

Source: Laws 1986, LB 284, § 14.

46-1115. Permitholder, defined. Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

Source: Laws 1986, LB 284, § 15.

46-1116. Pesticide, defined. Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

Source: Laws 1986, LB 284, § 16.

46-1117. Permit required; exception; application. After January 1, 1987, no person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. After such date any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department. Forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in sections 46-1118 and 46-1119, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified as a chemigation applicator under sections 46-1128 and 46-1129. A copy of each approved application shall immediately be forwarded by the district to the department. This section shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 46-1127.

Source: Laws 1986, LB 284, § 17.

46-1117.01. Special permit; issuance. Permits for those systems determined through inspection by the district as not needing all of the safety equipment prescribed by the Nebraska Chemigation Act shall be forwarded immediately to the department for review. If the department determines that certain elements of the safety equipment otherwise prescribed by the act are not necessary, it shall so inform the district. The district shall then issue a special permit as approved by the department. Issuance of such special permits shall not relieve the permitholder or applicator from compliance with all other responsibilities under the act.

Source: Laws 1988, LB 1046, § 2.

46-1118. Provisional permit; when issued; revocation. For the period commencing on January 1, 1987, through September 30, 1987, a provisional permit may be issued by the district prior to conducting an inspection if the work demands on the district do not permit an inspection to be made within forty-five days after an application is filed or if the applicator does not have sufficient time to meet the certification requirements of sections 46-1128 and 46-1129. Each district shall, on or before January 1, 1988, complete an inspection of each irrigation distribution system for which a provisional permit has been issued. Provisional permits shall be revoked without a hearing if the inspection shows that the irrigation distribution system does not comply with

the equipment requirements of section 46-1127 or if the applicator has not met the certification requirements of sections 46-1128 and 46-1129 on or before January 1, 1988. Commencing October 1, 1987, no permit shall be issued by the district until an inspection has been completed and the irrigation distribution system is found to be in compliance with the requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129.

Source: Laws 1986, LB 284, § 18.

46-1119. Emergency permit; application; fee; violation; penalty. (1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within forty-eight hours after the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 46-1127 and the applicator has been certified under sections 46-1128 and 46-1129. If the district has not denied an emergency permit within forty-eight hours, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee of one hundred dollars payable to the district. Ninety dollars of the fee shall be retained by the district, and ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 46-1120.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

Source: Laws 1986, LB 284, § 19.

46-1120. Application; contents. Each application to engage in chemigation shall contain (1) the name and post office address of the applicant, (2) the location by legal description of the land where chemigation is to be used, and (3) such other information as the department, after consultation with the district, may deem necessary.

Source: Laws 1986, LB 284, § 20.

46-1121. Fees; Chemigation Costs Fund; created; investment; annual permits; renewal. (1) The fee for initial application for a permit or special permit shall be thirty dollars payable to the district. Twenty-five dollars of the fee shall be retained by the district and five dollars paid by the district to the department.

The annual fee for renewal of a permit or special permit shall be ten dollars paid to the district. Two dollars of the annual fee shall be paid by the district to the department.

All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be credited to the Chemigation Costs Fund which is hereby created. All fees collected by the department pursuant to the act shall be remitted to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) All permits issued pursuant to sections 46-1117 and 46-1117.01 shall be annual permits and shall expire each year on June 1. A permit may be renewed each

year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Source: Laws 1986, LB 284, § 21; Laws 1987, LB 146, § 5; Laws 1988, LB 1046, § 3; Laws 1995, LB 7, § 43.

46-1122. Replacement or alteration of chemigation equipment; notice; inspection. Any permitholder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the district shall notify the district within seventy-two hours of such replacement or alteration. The district shall conduct an inspection of the replaced or altered equipment and shall approve the continuance of chemigation if the replaced or altered equipment remains in compliance with the requirements of section 46-1127. No additional permit fee shall be collected by the district for inspecting a previously approved injection location.

Source: Laws 1986, LB 284, § 22.

46-1123. Districts; annual reports; contents. Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the location of each permitted chemigation system in the district, the name of each permitholder utilizing chemigation in the district, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

Source: Laws 1986, LB 284, § 23.

46-1124. District; conduct inspections; inspection warrant. (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. Authorized representatives of the district and the department shall have access at all reasonable times to inspect a chemigation system and to otherwise carry out their duties under the act. 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 may apply to the district or county court of the county in which the chemigation system is located for an inspection warrant to require the permitholder or person believed to be chemigating without a required permit to allow the 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 the act shall not be considered to be 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.

Source: Laws 1986, LB 284, § 24; Laws 1989, LB 619, § 1.

46-1125. Permit denial, suspension, revocation; grounds. The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 46-1117 or 46-1118 on any of the following grounds:

(1) Practice of fraud or deceit in obtaining a permit; or

(2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 284, § 25.

46-1126. Permit denial, suspension, or revocation; procedures; suspend operation; when. (1) Before a district denies, refuses 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 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 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) 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 order suspension of the operation of the system. Any aggrieved 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, 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, applicator, or person responsible for the operation of the chemigation system pursuant to the procedure prescribed by section 46-1138.

Source: Laws 1986, LB 284, § 26; Laws 1989, LB 619, § 2.

46-1127. Irrigation distribution system; improper operation; penalty; equipment; rules and regulations. (1) Any person who places any chemical in an irrigation distribution system or permits any chemical to be in an irrigation distribution system without having a properly operating (a) check and vacuum relief valve in the irrigation pipe, (b) inspection port or other device to check the performance of the check valve on the irrigation pipeline, (c) automatic low-pressure drain placed between the main check valve and the irrigation pump so that a solution will drain away from the source of water supply, (d) check valve in the chemical injection line, and (e) simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the water supply from contamination in the event such pumping plant ceases to operate or such other properly operating additional or replacement equipment as may be specified by the council pursuant to subsection (3) of this section shall be guilty of a Class IV misdemeanor.

(2) On or before October 1, 1986, the council shall adopt and promulgate rules and regulations specifying the standards for the equipment required pursuant to this section as are necessary to prevent the contamination of the water supply. The standards specified in such rules and regulations shall not be such as to impose an unduly severe or costly burden on any person without substantially contributing to the prevention of water contamination.

(3) The council may adopt and promulgate rules and regulations specifying equipment other than that required in subsection (1) of this section if changes in design, technology, or irrigation practices or other similar reasons warrant the use of equipment in addition to or in lieu of that enumerated in this section. Any equipment specified pursuant to this subsection shall provide protection to the water supply at least equal to that provided by the equipment required in subsection (1) of this section. The districts shall be given forty-five days to review and comment on rules and regulations proposed by the council prior to the hearing by the council.

Source: Laws 1972, LB 1343, § 1; Laws 1977, LB 40, § 267;
Laws 1977, LB 421, § 1; Laws 1979, LB 4, § 1;
R.S.1943, (1984), § 46-612.01; Laws 1986, LB 284, § 27.

46-1128. Applicators of chemicals; training sessions; certificate; expiration. In order to insure that applicators of chemicals have sufficient scientific and practical knowledge in the use of chemigation, the director shall conduct training sessions directed toward thorough comprehension and knowledge of the safe use of chemigation or contract with the Cooperative Extension Service of the University of Nebraska to conduct such training sessions through its county extension agents and specialists in the state. If the department contracts for the training sessions, the Cooperative Extension Service shall be reimbursed for conducting the training sessions. The director shall issue a certificate acknowledging the satisfactory demonstration of competency to be determined by the director through the use of a written examination prepared and administered by the department. Each applicator's certificate, including such certificates issued prior to July 9, 1988, shall expire on January 1 of the fourth year after the date of issuance and shall be renewed upon the satisfactory completion of training and testing.

Source: Laws 1986, LB 284, § 28; Laws 1988, LB 1046, § 4.

46-1129. Training sessions; council; prescribe forms; adopt rules and regulations. The council shall prescribe the necessary forms and adopt and promulgate such rules and regulations as shall be necessary to carry out the provisions of section 46-1128 regarding the conducting of training sessions and the issuing of certificates.

Source: Laws 1986, LB 284, § 29.

46-1129.01. Applicator's certificate; revocation; grounds. An applicator's certificate may be revoked by the department if the applicator:

(1) Operates a chemigation system that is known to be defective or not in compliance with permit requirements;

(2) Fails to report any actual or suspected accident resulting from the use of chemigation;

(3) Operates or authorizes operation of a chemigation system without the necessary permit; or

(4) Violates any of the provisions of the Nebraska Chemigation Act or standards, rules, and regulations adopted and promulgated pursuant to such act.

Source: Laws 1988, LB 1046, § 5.

46-1130. Posting of signs. Signs shall be posted which provide notice that chemicals are applied in irrigation water in the field in areas being treated by means of chemigation with chemicals which appear on the restricted use list in the Federal Insecticide, Fungicide, and Rodenticide Act or chemicals for which labels require posting.

Source: Laws 1986, LB 284, § 30.

46-1131. Accident; report required; investigation; cleanup and recovery plan. The applicator or the permitholder shall report an actual or suspected accident related to the use of chemigation in his or her system to the department and the appropriate district within twenty-four hours of its discovery. Any accident resulting from the use of chemigation shall be investigated by the appropriate district and the department. In the event that the district or the department finds an adverse effect caused by such an accident, the department shall (1) determine the immediate danger presented by the accident, (2) take all steps necessary to assure immediate public safety, and (3) develop a plan of cleanup and recovery. The cleanup and recovery plan shall be carried out by the permitholder under the supervision of the department or the district.

Source: Laws 1986, LB 284, § 31.

46-1132. Damage to premises; considered tort claim. Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the district while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the Political Subdivisions Tort Claims Act. Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the department while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the State Tort Claims Act.

Source: Laws 1986, LB 284, § 32.

46-1133. Assistance to abate water contamination. Each district or the department may provide technical and other assistance as may be necessary or desirable to abate the risk of water contamination in the state caused by chemigation.

Source: Laws 1986, LB 284, § 33.

46-1134. Department; powers and duties. The department shall have the power and duty:

(1) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, industries, and groups in furtherance of the purposes of the Nebraska Chemigation Act; and

(2) To receive or initiate complaints of water contamination, hold hearings in connection with water contamination, and institute legal proceedings in the name of the state for the control or prevention of water contamination.

Source: Laws 1986, LB 284, § 34.

46-1135. District; adopt rules and regulations. Each district may adopt and promulgate such rules and regulations as shall be necessary to carry out its responsibilities under the Nebraska Chemigation Act. The rules and regulations of a district shall be subject to approval by the director.

Source: Laws 1986, LB 284, § 35.

46-1136. Council; adopt rules and regulations. The council shall adopt and promulgate rules and regulations providing for:

(1) Procedures and specifications for the installation, replacement, or repair of chemigation equipment;

(2) A system for the issuance of permits by the district to engage in chemigation;

(3) A procedure for a permitholder to follow when notifying the department and the appropriate district of any actual or suspected accident related to the use of chemigation;

(4) A procedure for the review and approval of a cleanup and recovery plan for an accident related to the use of chemigation;

(5) The posting of signs providing notice of the use of chemigation; and

(6) Any other chemigation practices necessary to carry out the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 36.

46-1137. Compliance with act; affirmative defense. Compliance with the Nebraska Chemigation Act shall be an affirmative defense to any civil action resulting from a person's use of chemigation.

Source: Laws 1986, LB 284, § 37.

46-1138. Violation of act; procedures for compliance; prosecuting attorney; duties. (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 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 this section to be instituted and pursued without delay.

Source: Laws 1986, LB 284, § 38; Laws 1989, LB 619, § 3.

46-1139. Engaging in chemigation without a permit; penalty. Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of not more than one thousand dollars or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 39.

46-1140. Engaging in chemigation with a suspended or revoked permit; penalty. Any person who engages in chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of not more than one thousand dollars or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 40.

46-1141. Tampering with chemigation equipment; penalty. Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 46-1127 shall be (1) subject to a civil penalty of not more than one thousand dollars or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such

injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 41.

46-1142. Failure to notify of accident; penalty. Any permitholder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of not more than five hundred dollars or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 42.

46-1143. Other violations; penalty. Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of not more than five hundred dollars or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Source: Laws 1986, LB 284, § 43.

46-1144. District; failure to carry out responsibilities; hearing; procedure. If at any time after January 1, 1988, it is alleged by the department upon its own initiative or as a result of a complaint being filed with the department that a district is not carrying out its responsibilities under the Nebraska Chemigation Act, the department may hold a contested case hearing. Notice of such hearing shall be published in such newspapers as are necessary to provide for general circulation within the district at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall inform the public as to the reasons for such hearing. The director shall receive evidence from all interested parties at the hearing. Each hearing conducted pursuant to this section shall be recorded, and such record shall be available for review.

Source: Laws 1986, LB 284, § 44.

46-1145. District; failure to carry out responsibilities; effect. If after a hearing held pursuant to section 46-1144 the director determines that the district is not carrying out its responsibilities under the Nebraska Chemigation Act, the powers and duties of the district set out in the act shall vest in the department for a period of twelve months. All application fees shall be payable to the department during such twelve-month period and shall be placed in the Chemigation Costs Fund. Each district which has lost its powers and duties to the department shall, at least thirty days prior to the end of any such twelve-month period, inform the director as to whether it is now able to carry out its responsibilities under the Nebraska Chemigation Act or the reasons why it will continue to be unable to meet such responsibilities. If the district is unable to meet its responsibilities, the department may continue to perform the powers and duties required of the district for an additional twelve-month period.

Source: Laws 1986, LB 284, § 45.

46-1146. Appeal; procedure. Any affected person aggrieved by any order issued or final decision made by the department pursuant to the Nebraska Chemigation Act may appeal the order or decision, and the appeal shall be in accordance with the Administrative Procedure Act. As used in this section, affected person shall mean an applicant for a permit which is subject to an order or final decision of the department or district and any owner of an estate or interest in or concerning land whose interest is or may be impacted in a direct or significant manner by the order or final decision of the department or district.

Source: Laws 1986, LB 284, § 46; Laws 1988, LB 352, § 82.

46-1147. Powers of department; construction of act. Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of the department provided in Chapter 81, article 15.

Source: Laws 1986, LB 284, § 47.

46-1148. Powers of district; construction of act. Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of a district provided in the Nebraska Ground Water Management and Protection Act.

Source: Laws 1986, LB 284, § 48.

WATER WELL STANDARDS AND CONTRACTORS' LICENSING ACT

46-1201. Act, how cited. Sections 46-1201 to 46-1241 shall be known and may be cited as the Water Well Standards and Contractors' Licensing Act.

Source: Laws 1986, LB 310, § 1; Laws 1991, LB 51, § 18;
Laws 1993, LB 131, § 38; Laws 1994, LB 981, § 9;
Laws 1996, LB 1241, § 2; Laws 2001, LB 133, § 1.

46-1202. Purposes of act. The purposes of the Water Well Standards and Contractors' Licensing Act are to: (1) Provide for the protection of ground water through the licensing and regulation of water well contractors and pump installation contractors and the certification of water well drilling supervisors, pump installation supervisors, water well monitoring technicians, and natural resources ground water technicians in the State of Nebraska; (2) protect the health and general welfare of the citizens of the state; (3) protect ground water resources from potential pollution by providing for proper siting and construction of water wells and proper decommissioning of water wells; and (4) provide data on potential water supplies through well logs which will promote the economic and efficient utilization and management of the water resources of the state.

Source: Laws 1986, LB 310, § 2; Laws 1994, LB 981, § 10;
Laws 2001, LB 133, § 2; Laws 2001, LB 667, § 11.

46-1203. Definitions, where found. For purposes of the Water Well Standards and Contractors' Licensing Act, unless the context otherwise requires, the definitions found in sections 46-1204.01 to 46-1216 shall be used.

Source: Laws 1986, LB 310, § 3; Laws 1991, LB 51, § 19;
Laws 1993, LB 131, § 39; Laws 1994, LB 981, § 11;
Laws 1996, LB 1241, § 3; Laws 2001, LB 133, § 3.

46-1204.01. Abandoned water well, defined. Abandoned water well means any water well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services Regulation and Licensure, and (3) for which the notice of abandonment required by subsection (2) of section 46-602 has been filed with the Department of Natural Resources by the licensed water well contractor or pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.

Source: Laws 1994, LB 981, § 12; Laws 1996, LB 1044, § 264; Laws 2000, LB 900, § 234; Laws 2001, LB 667, § 12; Laws 2003, LB 245, § 7.

46-1204.02. Active status water well, defined. Active status water well shall mean a water well which is in use and which is not an illegal water well.

Source: Laws 1994, LB 981, § 13.

46-1205. Board, defined. Board shall mean the Water Well Standards and Contractors' Licensing Board created in section 46-1217.

Source: Laws 1986, LB 310, § 5.

46-1205.01. Certified natural resources ground water technician, defined. Certified natural resources ground water technician means a natural resources ground water technician who has taken a training course, passed an examination based on the training course, and received a certificate from the department indicating that he or she is a certified natural resources ground water technician.

Source: Laws 2001, LB 133, § 4.

46-1206. Construction of water wells, defined. Construction of water wells shall mean and include all acts necessary to make a water well usable for the purpose for which it is intended including, without limitation, the siting of and excavation for the water well and its construction, alteration, or repair, but excluding the installation of pumps and pumping equipment.

Source: Laws 1986, LB 310, § 6.

46-1206.01. Decommissioned, defined. Decommissioned, when used in relation to a water well, shall mean the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the department.

Source: Laws 1994, LB 981, § 14.

46-1207. Department, defined. Department shall mean the Department of Health and Human Services Regulation and Licensure.

Source: Laws 1986, LB 310, § 7; Laws 1996, LB 1044, § 265.

46-1207.01. Illegal water well, defined; landowner; petition for reclassification; when. (1) Illegal water well shall mean any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard;

(f) The water well is an illegal water well in accordance with section 46-706; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Licensing Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Source: Laws 1994, LB 981, § 15; Laws 1996, LB 108, § 76; Laws 2004, LB 962, § 98.

46-1207.02. Inactive status water well, defined. Inactive status water well shall mean a water well that is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements:

(1) The water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well;

(2) The top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well;

(3) All entrances and discharge piping to the water well are effectively sealed to prevent the entrance of contaminants; and

(4) The water well is marked so as to be easily visible and located and is labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.

Source: Laws 1994, LB 981, § 16; Laws 2004, LB 962, § 99.

46-1208. Installation of pumps and pumping equipment, defined. Installation of pumps and pumping equipment shall mean the procedure employed in the placement and preparation for operation of pumps and pumping equipment at the water well location, including connecting all wiring to the first control and all construction or repair involved in making entrance to the water well, which involves the breaking of the well seal.

Source: Laws 1986, LB 310, § 8; Laws 1993, LB 131, § 40; Laws 2006, LB 508, § 4.

46-1208.01. Person, defined. Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Source: Laws 1996, LB 1241, § 4.

46-1208.02. Natural resources ground water technician, defined. Natural resources ground water technician means any individual employed by a natural resources district and engaged in the inspection of chemigation systems, measuring and recording static water levels, inspection and servicing of flow meters, and water sampling practices and techniques. Natural resources ground water technician does not include: (1) An individual who constructs a water well or installs or repairs pumps or pumping equipment or a water well; (2) a water well monitoring technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode.

Source: Laws 2001, LB 133, § 5.

46-1209. Pump installation contractor, defined. Pump installation contractor means the principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Pump installation contractor does not include: (1) An individual who installs or repairs pumps and pumping equipment for a water well, or who decommissions a driven sandpoint well, which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode; (2) a pump installation supervisor; or (3) an individual who repairs pumps and pumping equipment at a location other than a water well location.

Source: Laws 1986, LB 310, § 9; Laws 2001, LB 667, § 13.

46-1210. Pump installation supervisor, defined. Pump installation supervisor means any individual engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor. Pump installation supervisor does not include: (1) An individual who installs or repairs pumps or pumping equipment for a water well, or decommissions a driven sandpoint well, which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode; (2) an individual who repairs pumps and pumping equipment at a location other than a water well location; or (3) any licensed pump installation contractor.

Source: Laws 1986, LB 310, § 10; Laws 2001, LB 667, § 14.

46-1211. Pumps and pumping equipment, defined. Pumps and pumping equipment shall mean any equipment or materials utilized or intended for use in

withdrawing or obtaining ground water including, but not limited to, seals, tanks, fittings, and controls.

Source: Laws 1986, LB 310, § 11.

46-1212. Water well, defined. Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Source: Laws 1986, LB 310, § 12; Laws 1993, LB 131, § 41; Laws 2004, LB 962, § 100.

46-1213. Water well contractor, defined. Water well contractor means the principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells. Water well contractor does not include: (1) An individual who constructs a water well, or who decommissions a driven sandpoint well, which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode; or (2) a water well drilling supervisor.

Source: Laws 1986, LB 310, § 13; Laws 2001, LB 667, § 15.

46-1214. Water well drilling supervisor, defined. Water well drilling supervisor means any individual engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor. Water well drilling supervisor does not include: (1) An individual who constructs a water well, or decommissions a driven sandpoint well, which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode; or (2) any licensed water well contractor.

Source: Laws 1986, LB 310, § 14; Laws 2001, LB 667, § 16.

46-1214.01. Water well monitoring technician, defined. Water well monitoring technician means any individual engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. Water well monitoring technician does not include: (1) An individual who constructs or decommissions a water well or installs or repairs pumps or pumping equipment or a water well; (2) a natural resources ground water technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode.

Source: Laws 1991, LB 51, § 20; Laws 2001, LB 133, § 6; Laws 2001, LB 667, § 17.

46-1215. Well repairs, defined. Well repairs shall mean any change, replacement, or other alteration of any water well, pump, or pumping equipment or any other activity which requires a breaking or opening of the well seal.

Source: Laws 1986, LB 310, § 15.

46-1216. Well seal, defined. Well seal shall mean an arrangement or device used to cap a water well or to establish and maintain a junction between the casing or curbing of a water well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the water well.

Source: Laws 1986, LB 310, § 16.

46-1217. Water Well Standards and Contractors' Licensing Board; created; members; qualifications. There is hereby created a Water Well Standards and Contractors' Licensing Board. The board shall be composed of ten members, six of whom shall be appointed by the Governor as follows: (1) A water well contractor representing irrigation water well contractors, (2) a water well contractor representing domestic water well contractors, (3) a water well contractor representing municipal and industrial water well contractors, (4) a pump installation contractor, (5) a manufacturer or supplier of water well or pumping equipment, and (6) a holder of a license or certificate issued under the Water Well Standards and Contractors' Licensing Act employed by a natural resources district. The Director of Health and Human Services Regulation and Licensure or his or her designated representative, the Director of Environmental Quality or his or her designated representative, the Director of Natural Resources or his or her designated representative, and the director of the Conservation and Survey Division of the University of Nebraska or his or her designated representative shall also serve as members of the board. Each member shall be a resident of the state. Each appointed member of the board shall have had at least five years of experience in the business of his or her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Licensing Act, with the exception of members initially appointed, shall be licensed by the department pursuant to such act. In making appointments, the Governor may consider recommendations made by the trade associations of each category.

Source: Laws 1986, LB 310, § 17; Laws 1993, LB 3, § 32;
Laws 1993, LB 131, § 42; Laws 1996, LB 1044, § 266;
Laws 2000, LB 900, § 235; Laws 2006, LB 508, § 5.

46-1218. Board; appointment; when; terms; vacancy. The Governor shall make the first appointments to the board within sixty days after October 1, 1986. Successors to the first appointees to the board shall be appointed for four-year terms. Two of the initial appointees shall serve terms of two years and two of the initial appointees shall serve terms of three years as determined by lot. The term of the remaining initial appointee shall be four years. No appointed member shall be appointed to serve three consecutive full four-year terms. Each appointed member shall hold office until the expiration of his or her term or until a successor has been appointed and qualified. Any vacancy occurring in the appointed board membership, other than by expiration of a term, shall be filled within

sixty days by the Governor by appointment from the appropriate category for the unexpired term.

Source: Laws 1986, LB 310, § 18.

46-1219. Board; meetings; officers; quorum. The board shall meet within sixty days after the appointment of its members and thereafter at such other times as is deemed necessary or advisable. Special meetings of the board shall be called upon the written request of any three members of the board. The place of all meetings shall be at the offices of the department, unless otherwise determined by the board. At the first meeting of the board, a chairperson and vice-chairperson shall be selected. A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the total number of members of the board shall be deemed to be an act of the board.

Source: Laws 1986, LB 310, § 19.

46-1219.01. Board members; immunity from liability. Members of the board shall not be liable for damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of the board if the member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1993, LB 131, § 44.

46-1220. Board; compensation; expenses. No member of the board shall receive any compensation for his or her services but members shall be entitled to receive their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1986, LB 310, § 20.

46-1221. Board; executive secretary; offices. The department shall designate an individual with the approval of the board to serve as executive secretary of the board, and the department shall furnish such offices and materials as may be necessary for the efficient operation of the board.

Source: Laws 1986, LB 310, § 21.

46-1222. Board; adopt rules and regulations. The board shall adopt and promulgate rules and regulations for the administration of its duties under the Water Well Standards and Contractors' Licensing Act, including examinations, water well registration fees, continuing competency requirements, and credentialing fees established and collected as provided in section 71-162.

Source: Laws 1986, LB 310, § 22; Laws 2002, LB 1021, § 1;
Laws 2003, LB 242, § 7.

46-1223. Licensure or certification; examination; requirements; fee; hardship licensing. (1) The department with the assistance of the board shall cause examination

to be made of applicants for licensure or certification. The board shall determine the type, categories, contents, and required passing grade of examinations to be administered to applicants for licensing or certification. Examinations shall be held at such times and places as the department, with the advice of the board, may determine. The department shall act within ninety days upon all completed applications for licensure or certification.

(2) Examinations for water well monitoring technicians shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, measuring ground water levels, and water sampling practices and techniques. Examinations for natural resources ground water technicians shall examine the knowledge of the applicant regarding inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and water sampling practices and techniques. All other examinations shall be designed and adopted to examine the knowledge of the applicant regarding the minimum standards for water wells and water well pumps, the geological characteristics of the state, current drilling or pump installation practices and techniques, and such other knowledge as deemed appropriate by the board. The board may adopt any nationally developed standard examinations as constituting part or all of the Nebraska examinations.

(3) An examinee who fails to pass the initial examination may retake such examination without charge at any regularly scheduled examination held within four months after failing to pass the initial examination, except that when a national standardized examination is utilized which requires the payment of a fee to purchase such examination, the board shall require the applicant to pay the appropriate examination fee whether an initial examination or a retake of an examination is involved.

(4) In cases of hardship, the board may provide and direct that special arrangements for administering examinations be utilized. The board may also provide for temporary hardship licensing without examination due to the death of the current license holder or for other good cause shown.

Source: Laws 1986, LB 310, § 23; Laws 1991, LB 51, § 21; Laws 1993, LB 131, § 43; Laws 2001, LB 133, § 8.

46-1223.01. Department; develop certification program. The department shall develop a certification program that is designed to train individuals to become certified natural resources ground water technicians. Such course shall be developed by the department in consultation with the natural resources districts. Such course shall include inspection of chemigation systems, measuring and recording static water levels, inspecting and servicing flow meters, and taking water samples. Training sessions shall not be less than two hours and shall not exceed eight hours. At the end of the training session, individuals taking the training shall be required to take a written examination.

Source: Laws 2001, LB 133, § 7.

46-1224. Board; set fees; Water Well Standards and Contractors' Licensing Fund; created; use; investment. (1) Except as otherwise provided in subsections (2) through (4) of this section, the board shall set reasonable fees in an amount calculated to recover the costs incurred by the department and the board in administering and carrying

out the purposes of the Water Well Standards and Contractors' Licensing Act. Such fees shall be paid to the department and remitted to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund, which fund is hereby created. Such fund shall be used by the department and the board for the purpose of administering the Water Well Standards and Contractors' Licensing Act. Additionally, such fund shall be used to pay any required fee to a contractor which provides the on-line services for registration of water wells. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Fees for credentialing individuals under the Water Well Standards and Contractors' Licensing Act shall be established and collected as provided in section 71-162.

(3) The board shall set a fee of not less than twenty-five dollars and not more than forty dollars for each water well which is required to be registered and which is designed and constructed to pump less than fifty gallons per minute and each monitoring and observation well and a fee of not less than forty dollars and not more than eighty dollars for each water well which is required to be registered and which is designed and constructed to pump fifty gallons per minute or more. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee set pursuant to this subsection shall be collected for each of the first ten such water wells registered, and for each group of ten or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. For a series of two or more water wells completed and pumped into a common carrier, as defined in section 46-601.01, as part of a single site plan for irrigation purposes, the fee set pursuant to this subsection shall be collected for each of the first two such water wells registered. For a series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground, the fee set pursuant to this subsection shall be collected as if only one water well was being registered. For water wells constructed as part of a single site plan for monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground and for water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, the fee set pursuant to this subsection shall be collected for each of the first five such water wells registered, and for each group of five or fewer such water wells registered thereafter, the fee shall be collected as if only one water well was being registered. The fees shall be remitted to the Director of Natural Resources with the registration form required by section 46-602 and shall be in addition to the fee in section 46-606. The director shall remit the fee to the State Treasurer for credit to the Water Well Standards and Contractors' Licensing Fund.

(4) The board shall set an application fee for a declaratory ruling or variance of not less than fifty dollars and not more than one hundred dollars.

Source: Laws 1986, LB 310, § 24; Laws 1993, LB 131, § 45; Laws 1994, LB 981, § 17; Laws 1994, LB 1066, § 34; Laws 1999, LB 92, § 4; Laws 2000, LB 900, § 236; Laws 2001, LB 667, § 18; Laws 2003, LB 242, § 8.

46-1225. License or certificate renewal; continuing competency required. (1) The board shall adopt and promulgate rules and regulations to establish continuing competency requirements for persons licensed or certified under the Water Well Standards and Contractors' Licensing Act. Continuing education is sufficient to meet continuing competency requirements. Such requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 71-161.09 which a licensed or certified person may select as an alternative to continuing education.

(2) Each renewal applicant shall, on or before the date of expiration of his or her license or certificate, complete documentation as required by the board that he or she has complied with the continuing competency requirements during the preceding period. Any licensee or certificate holder who has not complied with the continuing competency requirements shall not be issued a renewal license or certificate, unless he or she is exempted from the continuing competency requirements or he or she is unable to comply with the requirements due to circumstances beyond his or her control as determined by the board. Procedures for refusal of renewal of licenses and certificates or reinstatement of licenses and certificates shall be in accordance with section 46-1237.

Source: Laws 1986, LB 310, § 25; Laws 1993, LB 131, § 46; Laws 1996, LB 1044, § 267; Laws 2002, LB 458, § 6; Laws 2002, LB 1021, § 2.

46-1226. Department; administration of act; adopt rules and regulations; duties. The department shall, with the advice and consent of the board, adopt and promulgate rules and regulations for the administration of the Water Well Standards and Contractors' Licensing Act. The department shall be responsible for the administration and enforcement of such act and any standards, rules, or regulations adopted and promulgated by the department or the board pursuant to such act. The department shall consult with the board in carrying out the departmental duties under such act for (1) conducting examinations, (2) issuing, denying, refusing renewal of, suspending, or revoking licenses or certificates, and (3) collecting fees.

Source: Laws 1986, LB 310, § 26.

46-1227. Department; well and equipment standards; adopt rules and regulations. The department, with the advice and consent of the board, shall adopt and promulgate uniform rules and regulations, in accordance with the rules and regulations adopted and promulgated pursuant to sections 46-602 and 81-1505, for the establishment of standards for the (1) construction of water wells, (2) installation of pumps and pumping equipment, and (3) decommissioning water wells. Such rules, regulations, and standards may recognize differing hydrologic and geologic conditions, may recognize differing uses of any developed supplies, and shall be designed to

promote efficient methods of operation and prevent water wells from becoming a source of contamination to the aquifer. Such standards shall be applicable whether such activities are carried out by a water well contractor, a pump installation contractor, a water well drilling supervisor, a pump installation supervisor, or any other person. Nothing in this section shall be construed to require that the department adopt, promulgate, or amend rules and regulations for programs in existence on October 1, 1986.

Source: Laws 1986, LB 310, § 27; Laws 1993, LB 3, § 33; Laws 1994, LB 981, § 18.

46-1228. Department; access and inspection; powers. The department shall have (1) authority to inspect water wells constructed, water wells decommissioned, and water well locations, (2) access to water wells and accompanying pumps and pumping equipment at all reasonable times, and (3) power of inspection in regard to the construction and decommissioning of all water wells.

Source: Laws 1986, LB 310, § 28; Laws 2004, LB 962, § 101.

46-1229. License required; application; qualifications. Any person desiring to engage in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells shall make initial application for a license to the department. Each such application shall include satisfactory evidence that the applicant is at least the age of majority and is of good moral character. The department shall charge an application fee established as provided in section 71-162 for the filing of such application. The department shall not act upon any application until the application fee for such license has been paid. A license to engage in the construction or decommissioning of water wells or the installation of pumps and pumping equipment shall be issued to every applicant who demonstrates professional competence by successfully passing the examination prescribed in section 46-1223, pays the appropriate license fee, and otherwise complies with the Water Well Standards and Contractors' Licensing Act and all standards, rules, and regulations adopted and promulgated pursuant to such act. Applicants shall receive licenses for any category or combination of categories for which they have successfully passed the required examination. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1986, LB 310, § 29; Laws 1997, LB 752, § 122; Laws 2001, LB 667, § 19; Laws 2003, LB 242, § 9.

46-1230. Licensees; proof of insurance. Each applicant for licensing or relicensing as a water well contractor or as a pump installation contractor shall furnish proof to the department that there is in force a policy of public liability and property damage insurance issued to the applicant in an amount established by the department by rules and regulations sufficient to protect the public interest.

Source: Laws 1986, LB 310, § 30.

46-1231. Certificate; application; qualifications. Each water well drilling supervisor, pump installation supervisor, natural resources ground water technician, and water well monitoring technician shall make application for a certificate of

competence in his or her respective trade. The application shall include the applicant's social security number. Such application shall be made to the department which shall charge an application fee established as provided in section 71-162 for the filing of such application, and the department shall not act upon any application until the application fee for such certificate has been paid. A certificate shall be issued to every applicant who successfully passes the examination for such certificate, pays the appropriate certification fee, and otherwise complies with the Water Well Standards and Contractors' Licensing Act and all standards, rules, and regulations adopted and promulgated pursuant to such act. Any individual employed by a water well contractor or a pump installation contractor who is not deemed to qualify as a water well drilling supervisor or pump installation supervisor may make application for a certificate of competence in his or her respective trade in the same manner as the water well drilling supervisor or the pump installation supervisor.

Source: Laws 1986, LB 310, § 31; Laws 1991, LB 51, § 22; Laws 1997, LB 752, § 123; Laws 2001, LB 133, § 9; Laws 2003, LB 242, § 10.

46-1232. Licenses or certificates; when required; provisional license or certificate; issuance. No licenses or certificates required by the Water Well Standards and Contractors' Licensing Act shall be required until January 1, 1987. Individuals who are engaged as water well contractors, pump installation contractors, water well drilling supervisors, or pump installation supervisors on January 1, 1986, may, prior to January 1, 1987, make application for a provisional license or certificate issued pursuant to the Water Well Standards and Contractors' Licensing Act. The department shall issue a provisional license or certificate to any such applicant without examination if the applicant pays the application fee and the license or certificate fees and submits sufficient evidence, under oath, that he or she was engaged in such activity for at least twelve months prior to January 1, 1987. Any provisional licensee or certificate holder shall be required to take and pass the examination required under section 46-1223 on or before January 1, 1992, to be thereafter renewed.

Source: Laws 1986, LB 310, § 32.

46-1233. Water well construction or decommissioning; equipment installation; supervision required. No water well shall be constructed, no pump or pumping equipment shall be installed, and no water well shall be decommissioned by a person engaged in the construction of water wells or installation of pumps and pumping equipment unless the construction, installation, or decommissioning is carried out or supervised by a licensed water well contractor, water well drilling supervisor, pump installation contractor, or pump installation supervisor. For purposes of this section, supervision means the ready availability of the person licensed or certified pursuant to the Water Well Standards and Contractors' Licensing Act for consultation and direction of the activities of any person not licensed or certified who assists in the construction of a water well, the installation of pumps and pumping equipment, or decommissioning of a water well. Contact with the licensed contractor or certified supervisor by telecommunication shall be sufficient to show ready availability.

Source: Laws 1986, LB 310, § 33; Laws 1996, LB 1241, § 5; Laws 2001, LB 667, § 20.

46-1233.01. Water well opening or seal breaking; requirements; exceptions. In addition to the provisions of section 46-1233, the opening of a water well or the breaking of the seal of a water well may be carried out by the owner of the water well or by any of the following in the course of their employment:

(1) A certified water well monitoring technician;

(2) A certified natural resources ground water technician;

(3) A certified operator of a public water system or someone under his or her supervision; or

(4) A state electrical inspector.

Source: Laws 1991, LB 51, § 23; Laws 2001, LB 133, § 10; Laws 2003, LB 31, § 2; Laws 2006, LB 508, § 6.

46-1234. Exploratory wells; agreement to decommission required; failure to plug; effect. Any licensed water well contractor constructing a water well for any customer shall as a part of the agreement include the proper decommissioning of each water well constructed to explore for ground water pursuant to the agreement. Any failure to properly plug any such water well pursuant to such agreement shall subject him or her to suspension, revocation, or refusal of renewal of his or her license.

Source: Laws 1986, LB 310, § 34; Laws 1994, LB 981, § 19.

46-1235. License or certificate; disciplinary actions; grounds; reinstatement. In cases other than those relating to failure to meet the requirements for an initial license or an initial certificate, the department may deny, refuse renewal of, suspend, or revoke licenses or certificates or may take other disciplinary action for any of the following acts or offenses:

(1) Practice of fraud or deceit in obtaining a license or certificate;

(2) Violation of the Water Well Standards and Contractors' Licensing Act or any standards, rules, or regulations adopted and promulgated pursuant to such act;

(3) Incompetence or gross negligence in the performance of any activity for which licenses or certificates are issued pursuant to the act;

(4) Conduct or practices detrimental to the health or safety of persons hiring the services of the licensee or certificate holder or of members of the general public;

(5) Practice of the trade fraudulently, beyond the authorized scope, or with manifest incapacity;

(6) Practice of the trade while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical disability;

(7) Permitting, aiding, or abetting the practice of the trade or the performance of activities requiring a license or certificate by a person not licensed or certified to do so;

(8) Having had a license or certificate denied, refused renewal, limited, suspended, or revoked or having been disciplined in any other manner by another state or jurisdiction to practice water well construction, water well drilling, water well decommissioning, or pump installation based upon acts by the applicant, licensee, or certificate holder similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license or certificate or the taking of other disciplinary action by another state or jurisdiction shall be conclusive evidence;

(9) Unprofessional conduct as may be defined in rules and regulations of the board with approval of the department;

(10) Practice of the trade while the license or certificate to do so is suspended or practice of the trade in contravention of any limitation placed upon the license or certificate;

(11) Failing to file a water well registration required by subsection (1), (2), (3), (4), or (5) of section 46-602 or failing to file a notice required by subsection (7) of such section; or

(12) Failing to file a properly completed notice of abandonment of a water well required by subsection (8) of section 46-602.

A licensee or certificate holder shall not engage in the practice of the trade after a license or certificate is revoked or during the time for which it is suspended. If a license or certificate is suspended, the suspension shall be for a definite period of time to be fixed by the Director of Regulation and Licensure, and such license or certificate shall be automatically reinstated upon the expiration of such period if the current renewal fee has been paid. If such license or certificate is revoked, such revocation shall be for one year.

Source: Laws 1986, LB 310, § 35; Laws 1993, LB 131, § 47;
Laws 1996, LB 1044, § 268; Laws 2001, LB 667, § 21;
Laws 2003, LB 245, § 8.

46-1235.01. Licensee or certificate holder; probation; conditions. The authority of the Director of Regulation and Licensure to discipline a licensee or certificate holder by placing him or her on probation pursuant to sections 46-1235 and 46-1237.02 shall include, but not be limited to, the following:

(1) To require the licensee or certificate holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral, or both, and may be a practical or technical examination, or both, or any or all of such combinations of written, oral, practical, and technical at the option of the director; or

(2) To restrict or limit the extent, scope, or type of practice of the licensee or certificate holder upon consultation with the board.

Source: Laws 1993, LB 131, § 48; Laws 1996, LB 1044, § 269.

46-1235.02. License or certificate; application for reinstatement; denial; appeal. (1) A person who has been disciplined by means other than suspension or revocation of his or her license or certificate may apply for reinstatement of the license or certificate at any time.

(2) A person whose certificate or license has been revoked may apply for reinstatement of the license or certificate after a period of not less than one year has elapsed from the date of revocation.

(3) The application for reinstatement shall state such pertinent facts as may be required by the department and shall be accompanied by at least two verified recommendations of the activities of the applicant since the date of the suspension, revocation, or other discipline. The department shall prescribe forms for application for reinstatement. An applicant for reinstatement shall complete the continuing competency requirements in effect at the time of application.

(4) In determining whether to approve an application for reinstatement, the department may (a) investigate and consider the activities of the applicant since the disciplinary action was taken, including, but not limited to, activities prohibited by the Water Well Standards and Contractors' Licensing Act, the act or offense for which disciplinary action was taken, the applicant's conduct while the license or certificate was in good standing, and the applicant's general reputation for truth, professional ability, and good character, (b) require the applicant to take additional training, and (c) require the applicant to pass the examination.

(5) Denial of an application for reinstatement may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 131, § 49; Laws 2002, LB 1021, § 3.

46-1236. Licenses and certificates; expiration; renewal; notice. All licenses and certificates issued pursuant to the Water Well Standards and Contractors' Licensing Act shall expire on December 31 of the year for which issued. A license or certificate may be renewed on or before December 31 of each year upon payment of the annual fee established as provided in section 71-162. If a licensee or certificate holder has not paid for the renewal of his or her license or certificate on or before December 1, he or she shall be notified by certified or registered mail on or before December 15 that the license or certificate will expire. A license or certificate not renewed on or before December 31 or the first working day thereafter shall expire and may not be renewed except as provided in this section. Any licensee or certificate holder who fails to renew his or her license before December 31 shall be given a second notice by certified or registered mail on or before January 15 advising him or her (1) of the failure to renew and (2) that the license or certificate has expired. The department shall suspend action for sixty days following the date of expiration and upon the receipt of the renewal fee, together with the late fee established as provided in section 71-162, within sixty days of expiration, shall renew the license or certificate. An expired license or certificate may not be renewed after the sixty-day period without passing the examination required in section 46-1223.

Source: Laws 1986, LB 310, § 36; Laws 1987, LB 93, § 15;
Laws 1993, LB 131, § 50; Laws 2003, LB 242, § 11.

46-1237. License or certificate; disciplinary actions; procedures. If the department proposes to deny, refuse renewal of, suspend, or revoke a license or certificate or otherwise discipline a licensee or certificate holder for any of the reasons enumerated in the Water Well Standards and Contractors' Licensing Act, it shall send to the applicant, licensee, or certificate holder, by certified or registered mail, a notice setting forth the specific reasons for the proposed action. The denial, refusal of renewal, suspension, revocation, or other disciplinary action shall become final thirty days after the mailing of the notice unless the applicant, licensee, or certificate holder, within such period, gives written notice of a desire for a hearing. The applicant, licensee, or certificate holder shall then be given an opportunity for a formal hearing before the department and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the action in question shall be affirmed or set aside, and a copy of the decision setting forth the findings of fact and the specific reasons upon

which the decision is based shall be sent by either certified or registered mail to the applicant, licensee, or certificate holder. The decision shall become final thirty days after the copy is mailed unless the applicant, licensee, or certificate holder, within such period, appeals the decision.

Source: Laws 1986, LB 310, § 37; Laws 1988, LB 352, § 83; Laws 1993, LB 131, § 51.

46-1237.01. License or certificate; temporary suspension or limitation. The department may temporarily suspend or limit a license or certificate without notice or hearing if the Director of Regulation and Licensure determines that there is reasonable cause to believe that grounds exist under section 46-1235 for the revocation, suspension, or limitation of the license or certificate and that the licensee's or certificate holder's continuation in practice would constitute an imminent danger to public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or limitation. A continuance of the hearing shall be granted by the department upon written request of the licensee or certificate holder, and such a continuance shall not exceed thirty days. An order of temporary suspension or limitation shall take effect when served in person upon the licensee or certificate holder. A temporary suspension or limitation shall not be in effect for a period in excess of one hundred eighty days. At the end of such one-hundred-eighty-day period, the license or certificate shall be reinstated unless the department has revoked, suspended, or limited the license or certificate after notice and hearing.

Source: Laws 1993, LB 131, § 52; Laws 1996, LB 1044, § 270.

46-1237.02. Proceedings under act; Director of Regulation and Licensure; department; powers; orders authorized; appeal. (1) All proceedings under the Water Well Standards and Contractors' Licensing Act shall be summary in nature and triable as equity actions. Affidavits may be received in evidence at the discretion of the Director of Regulation and Licensure. The department may administer oaths, subpoena witnesses and compel their attendance, and issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as a district court. Depositions may be used by either party.

(2) Upon the completion of any hearing, the director may enter an order to exercise any or all of the following powers irrespective of the petition:

(a) Issue a censure or reprimand against the licensee or certificate holder;

(b) Suspend judgment;

(c) Place the licensee or certificate holder on probation;

(d) Place a limitation on the license or certificate and upon the right of the licensee or certificate holder to practice the trade to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(e) Impose a civil penalty under section 46-1240. The amount of the penalty shall be based on the severity of the violation;

(f) Enter an order of suspension;

(g) Enter an order of revocation; or

(h) Dismiss the action.

(3) If a licensee or certificate holder fails to appear, either in person or by counsel, at the time and place designated in a notice, the director, after receiving satisfactory evidence of the truth of the charges, shall order the license or certificate revoked or suspended or shall order any other appropriate disciplinary action.

(4) Any order issued under the act may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 131, § 53; Laws 1996, LB 1044, § 271.

46-1237.03. Costs of proceedings. If an order issued under the Water Well Standards and Contractors' Licensing Act is adverse to the licensee or certificate holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the department is the unsuccessful party, the costs shall be paid out of any money of the department available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court. All costs accrued at the instance of the department when it is the successful party, which the department certifies cannot be collected from the defendant, shall be paid out of any available funds of the department.

Source: Laws 1993, LB 131, § 54; Laws 2002, LB 458, § 7.

46-1238. License or certificate; when required; action to enjoin activities. Any person who fails to employ or use at least one individual appropriately licensed or certified and available or any person who engages, without a license or certificate for such activities, in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices, in addition to the other penalties provided in the Water Well Standards and Contractors' Licensing Act, may be enjoined from continuing such activities.

Source: Laws 1986, LB 310, § 38; Laws 1991, LB 51, § 24;
Laws 1996, LB 1241, § 6; Laws 2001, LB 667, § 22;
Laws 2006, LB 508, § 7.

46-1239. Unauthorized employment; construction, decommissioning, or installation without license or certificate; criminal penalty; civil penalty. Any person who fails to employ or use at least one individual appropriately licensed or certified and available or any person who engages, without a license or certificate for such activities, in the construction of water wells, the installation of pumps and pumping equipment, or the decommissioning of water wells is guilty of a Class II misdemeanor or subject to a civil penalty of not more than one thousand dollars for each day the violation occurs.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the

two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall remit the civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 310, § 39; Laws 1996, LB 1241, § 7; Laws 1997, LB 30, § 5; Laws 2001, LB 667, § 23; Laws 2006, LB 508, § 8.

46-1240. Failure to comply with standards; criminal penalty; civil penalty; action to enjoin. Any person who engages in or any person who employs or uses a person who engages in the construction of water wells, the installation of pumps and pumping equipment, the decommissioning of water wells, or the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment, pumping systems, or chemigation regulation devices or who fails to decommission or decommissions an illegal water well without complying with the standards adopted and promulgated pursuant to the Water Well Standards and Contractors' Licensing Act shall be guilty of a Class III misdemeanor or subject to a civil penalty of not more than five hundred dollars for each day an intentional violation occurs and may be enjoined from continuing such activity, including a mandatory injunction.

Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. An action to collect a civil penalty shall be brought within two years of the alleged violation providing the basis of the penalty, except that if the cause of action is not discovered and could not be reasonably discovered within the two-year period, the action may be commenced within two years after the date of discovery or after the date of discovery of facts which would reasonably lead to discovery, whichever is earlier. The department shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

Source: Laws 1986, LB 310, § 40; Laws 1991, LB 51, § 25; Laws 1993, LB 131, § 55; Laws 1994, LB 981, § 20; Laws 1996, LB 1241, § 8; Laws 1997, LB 30, § 6; Laws 2001, LB 667, § 24.

46-1240.01. False or forged documents; penalty. Any person who files or attempts to file with the department any false or forged diploma or certificate or affidavit of identification or qualification shall be guilty of forgery.

Source: Laws 1993, LB 131, § 56.

46-1240.02. Carrying license or certificate by fraud; penalty. Any person who presents to the department a diploma or certificate of which he or she is not the rightful owner for the purpose of procuring a license or certificate, who falsely impersonates anyone to whom a license or certificate has been issued by the department, who falsely holds himself or herself out to be a person licensed or certified by the department, or who aids and abets another who is not licensed or certified to practice any trade for which a

license or certificate is required by the Water Well Standards and Contractors' Licensing Act in practicing the trade shall be guilty of a Class IV felony.

Source: Laws 1993, LB 131, § 57.

46-1240.03. Department; enforcement of act; investigations; powers and duties. The department shall enforce the Water Well Standards and Contractors' Licensing Act and for that purpose shall make necessary investigations relative thereto. Every licensee or certificate holder and member of the board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated. He or she shall also report to the department the name of every person without a license or certificate that he or she has reason to believe is engaged in practicing any trade for which a license or certificate is required by the act.

Source: Laws 1993, LB 131, § 58.

46-1240.04. Acts constituting evidence of engaging in trade. The opening of an office for the practice of any trade for which a license is required by the Water Well Standards and Contractors' Licensing Act, the announcing to the public in any manner the intention to practice such trade, the use of any professional degree or designation or any sign, card, circular, device, or advertisement as a practitioner of any such trade or as a person skilled in the same shall be prima facie evidence of engaging in such trade.

Source: Laws 1993, LB 131, § 59.

46-1240.05. Violations; administrative order; emergency; hearing. (1) Whenever the Director of Regulation and Licensure has reason to believe that a violation of any provision of the Water Well Standards and Contractors' Licensing Act or any rule or regulation adopted and promulgated by the department is occurring or has occurred, he or she may cause an administrative order to be served upon the person alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the person named in the order requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the person appear before the director at a time and place specified in the notice and answer the charges. The notice shall be served on the person not less than thirty days before the time set for the hearing.

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a chemical, material, procedure, or act which is determined by the director to be harmful or potentially harmful to human health, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the director, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(3) The director shall afford to the alleged violator an opportunity for a hearing before the department.

Source: Laws 1993, LB 131, § 60; Laws 1996, LB 1044, § 272.

46-1240.06. Variance from rule, regulation, or standard; conditions; injunction. (1) The department may grant a variance from any rule, regulation, or standard adopted and promulgated by the department relating to the construction of water wells upon proof by a licensed water well contractor or owner of a proposed water well satisfactory to the department that the enforcement of the rule, regulation, or standard would create an unreasonable hardship or be unreasonable, impractical, or not feasible under the circumstances. A variance may be under such terms and conditions and for such time as the department may prescribe. The terms and conditions of a variance may include testing, monitoring, reporting, and additional construction or installation requirements.

(2) A variance shall be limited to the construction of a water well to replace existing water well.

(3) Any person who owns or operates water well in violation of the terms and conditions of a variance may be enjoined from continuing such activities. The injunction may include an order to properly decommission the water well.

Source: Laws 1993, LB 131, § 61; Laws 1994, LB 981, § 21.

46-1241. Water well log required; contents. Any owner of a water well or water well contractor who engages in an act of or the business of constructing a water well shall keep and maintain an accurate well log of the construction of each such water well. The well log shall be available to the department for inspection and copying during reasonable hours or the regular business hours of the contractor.

The well log shall include the following information:

(1) Legal description of the water well;

(2) Description and depth of geologic materials encountered;

(3) Depth and diameter or dimension of constructed water well and test hole;

(4) Depth and diameter or dimension of excavated hole if applicable;

(5) Depth of formation stabilizer or gravel pack and size of particles if used;

(6) Depth and thickness of grout or other sealing material if applicable;

(7) Casing information, including length, inside diameter, wall thickness, and type of material if applicable;

(8) Screen information, including length, trade name, inside and outside diameter, slot size, and type of material if applicable;

(9) Static water level;

(10) Water level when pumped at the designated rate, giving the rate of pumping and amount of time pumped, if applicable;

(11) Yield of water well in gallons per minute or gallons per hour if applicable;

(12) Signature of water well contractor;

(13) Dates drilling commenced and construction completed;

(14) Intended use of the water well;

(15) Name and address of the owner;

(16) Identification number of any permit for the water well issued pursuant to Chapter 46, article 6, Chapter 66, article 11, or any other law;

(17) Name, address, and license number of any license issued pursuant to the Water Well Standards and Contractors' Licensing Act of any person, other than the owner of the water well, who constructed the water well; and

(18) Other data as the board reasonably requires.

Source: Laws 1986, LB 310, § 41; Laws 1993, LB 131, § 62; Laws 2001, LB 667, § 25.

WATER QUALITY MONITORING

46-1301. Legislative findings. The Legislature finds that (1) existing monitoring of ground water quality performed by natural resources districts is excellent and deserves recognition, (2) substantial efforts have been undertaken by the Department of Environmental Quality to monitor surface water quality, and (3) it is within the state's capacity to develop a comprehensive, integrated statewide water quality monitoring system.

Source: Laws 2000, LB 1234, § 18.

46-1304. Report required; Department of Environmental Quality; duties. Department of Environmental Quality shall prepare a report outlining the extent of ground water quality monitoring conducted by natural resources districts during the preceding calendar year. The department shall analyze the data collected for the purpose of determining whether or not ground water quality is degrading or improving and shall present the results to the Natural Resources Committee of the Legislature beginning December 1, 2001, and each year thereafter. The districts shall submit in a timely manner all ground water quality monitoring data collected to the department or its designee. The department shall use the data submitted by the districts in conjunction with all other readily available and compatible data for the purposes of the annual ground water quality trend analysis.

Source: Laws 2001, LB 329, § 11.

WELLHEAD PROTECTION AREA ACT

46-1501. Act, how cited. Sections 46-1501 to 46-1509 shall be known and may be cited as the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 2.

46-1502. Terms, defined. For purposes of the Wellhead Protection Area Act:

(1) Controlling entity means a city, a village, a natural resources district, a rural water district, any other entity, including, but not limited to, a privately owned public water supply system, or any combination thereof operating under an agreement pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that operates a public water supply system;

(2) Department means the Department of Environmental Quality;

(3) Director means the Director of Environmental Quality; and

(4) Wellhead protection area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

Source: Laws 1998, LB 1161, § 3; Laws 1999, LB 87, § 73.

46-1503. Wellhead protection area; designation. Any controlling entity may designate a wellhead protection area and adopt controls pursuant to the Wellhead Protection Area Act for the purpose of protecting the public water supply system. The department shall provide technical assistance to any controlling entity designating a wellhead protection area and adopting controls pursuant to the act.

Source: Laws 1998, LB 1161, § 4.

46-1504. Wellhead protection area designation; controlling entity; duties. Any controlling entity proposing to designate a wellhead protection area and adopt controls shall:

(1) Designate the boundaries of the wellhead protection area following the procedure in section 46-1505. The wellhead protection area shall be based on all reasonably available hydrogeologic information on ground water flow, recharge, and discharge and other related information necessary to adequately determine the wellhead protection area for the purposes stated in this section;

(2) Identify within each proposed wellhead protection area all potential sources of contaminants which may have any adverse effect on the health of persons;

(3) Describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of controls, education, training, and demonstration projects to protect the water supply within the wellhead protection area from such contaminants;

(4) Include contingency plans for the location and provision of alternate drinking water supplies for each affected public water supply system in the event of water well or well field contamination by such contaminants; and

(5) Propose the controls necessary to provide protection from contaminants which may have any adverse effect on the health of persons served by the public water supply system of each participating controlling entity.

Source: Laws 1998, LB 1161, § 5.

46-1505. Proposed wellhead protection area; public notice and comment. The controlling entity shall publicize proposed boundaries for the wellhead protection area and the proposed controls and shall provide time for public comment at one or more regularly scheduled public meetings of the governing board of the controlling entity. Notice of the time for public comment shall be published in conjunction with notice of such regularly scheduled meeting. A description of the proposed boundaries and the text of the proposed controls shall be available at the office of the controlling entity for thirty days before such meeting. Persons shall be given the opportunity to speak on the proposed designation and the proposed controls or to submit written testimony for consideration by the controlling entity.

Source: Laws 1998, LB 1161, § 6.

46-1506. Boundaries of wellhead protection area; designation; procedure. Within sixty days after the last time for public comment under section 46-1505, the controlling entity shall make a final designation of the boundaries of the wellhead protection area and the controls necessary to protect the water in the wellhead protection area and shall submit them to the director for approval or disapproval. Such approval shall be based on whether the boundaries of the wellhead protection area are reasonably defined, the controls are reasonably related to the purpose of ground water protection in the area, and such approval is in the public interest. The director shall act on the proposed designation of boundaries and proposed controls within ninety days after the date the proposals are received by him or her.

If the director approves the proposed boundaries and controls, he or she shall so notify the controlling entity, but the boundaries and controls shall not be deemed effective until the controlling entity has adopted such boundaries and controls by ordinance or resolution. If the director disapproves either or both of the proposals, he or she shall return the proposals to the controlling entity with an explanation of the reasons for such disapproval. The controlling entity may revise such proposed designation of boundaries and proposed controls and, after notice and hearing as provided for in the original proposed designation of boundaries and proposed controls, submit the revised proposed designation of boundaries and proposed controls to the director for approval or disapproval.

If the director does not act on either the original or revised proposed designation of boundaries and proposed controls within ninety days after submission by the controlling entity, the proposed designation of boundaries and proposed controls shall be deemed approved by the director.

Source: Laws 1998, LB 1161, § 7.

46-1507. Existing wellhead protection areas; effect of act. Any wellhead protection area established before July 15, 1998, by resolution or ordinance of the controlling entity need not be reestablished under the Wellhead Protection Area Act unless controls are proposed. If such controls are proposed, the controls and the boundaries of the wellhead protection area are subject to the requirements of sections 46-1504 to 46-1506. Any wellhead protection area purported to have been established before July 15, 1998, other than by official action of a controlling entity shall be null and void beginning nine calendar months after July 15, 1998, unless reestablished by resolution or ordinance of the controlling entity.

Source: Laws 1998, LB 1161, § 8.

46-1508. Designated wellhead protection area; boundary area changes. A designated wellhead protection area may be amended as to boundaries and controls as provided for in the initial designation of a wellhead protection area in the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 9.

46-1509. Environmental Quality Council; rules and regulations. The

Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Wellhead Protection Area Act.

Source: Laws 1998, LB 1161, § 10.

STORM WATER MANAGEMENT PLAN PROGRAM

46-2,139. Storm Water Management Plan Program; created; assistance to cities and counties; grants; Department of Environmental Quality; duties. The Storm Water Management Plan Program is created. The purpose of the program is to facilitate and fund the duties of cities and counties under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements. The Storm Water Management Plan Program shall function as a grant program administered by the Department of Environmental Quality, using funds appropriated for the program. The department shall deduct from funds appropriated amounts sufficient to reimburse itself for its costs of administration of the grant program. Any city or county when applying for a grant under the program shall have a storm water management plan approved by the department which meets the requirements of the National Pollutant Discharge Elimination System. Grant applications shall be made to the department on forms prescribed by the department. Grant funds shall be distributed by the department as follows:

(1) Not less than eighty percent of the funds available for grants under this section shall be provided to cities and counties in urbanized areas, as identified in 64 Federal Register 68822, that apply for grants and meet the requirements of this section. Grants made pursuant to this subdivision shall be distributed proportionately based on the population of applicants within such category, as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. Any funds available for grants under this subdivision and not awarded by the end of a calendar year shall be available for grants in the following year; and

(2) Not more than twenty percent of the funds available for grants under this section shall be provided to cities and counties outside of urbanized areas, as identified in 64 Federal Register 68822, with populations greater than ten thousand inhabitants as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census, that apply for grants and meet the requirements of this section. Grants under this subdivision shall be distributed proportionately based on the population of applicants within this category as determined by the most recent federal census update or recount certified by the United States Department of Commerce, Bureau of the Census. Any funds available for grants pursuant to this subdivision which have not been awarded at the end of each calendar year shall be available for awarding grants pursuant to subdivision (1) of this section.

Any city or county receiving a grant under subdivision (1) or (2) of this section shall contribute matching funds equal to twenty percent of the grant amount.

Source: Laws 2006, LB 1226, § 6.

LIVESTOCK WASTE MANAGEMENT ACT

54-2416. Act, how cited. Sections 54-2416 to 54-2438 shall be known and may be cited as the Livestock Waste Management Act.

Source: Laws 1998, LB 1209, § 1; Laws 1999, LB 822, § 7; Laws 2003, LB 619, § 15; R.S.Supp.,2003, § 54-2401; Laws 2004, LB 916, § 5; Laws 2006, LB 975, § 1.

54-2417. Terms, defined. For purposes of the Livestock Waste Management Act:

(1) Animal feeding operation means a location where beef cattle, dairy cattle, horses, swine, sheep, poultry, or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste. Animal feeding operation does not include aquaculture as defined in section 2-3804.01;

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

(3) Construct means the initiation of physical onsite activities;

(4) Construction and operating permit means the state permit to construct and operate a livestock waste control facility, including conditions imposed on the livestock waste control facility and the associated animal feeding operation;

(5) Construction approval means an approval issued prior to December 1, 2006, by the department allowing construction of a livestock waste control facility;

(6) Council means the Environmental Quality Council;

(7) Department means the Department of Environmental Quality;

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

(9) Existing livestock waste control facility means a livestock waste control facility in existence prior to April 15, 1998, that does not hold a permit and which has requested an inspection prior to January 1, 2000;

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

(11) Major modification means an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of

animals; change in animal species; or change in the size or location of the livestock waste control facility;

(12) National Pollutant Discharge Elimination System permit means either a general permit or an individual permit issued by the department pursuant to subsection (11) of section 81-1505. A general permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries, though it may exclude specified areas from coverage. General permits are limited to the same or similar types of animal feeding operations or livestock waste control facilities which require the same or similar monitoring and, in the opinion of the Director of Environmental Quality, are more appropriately controlled under a general permit than under an individual permit;

(13) New animal feeding operation means an animal feeding operation constructed after July 16, 2004;

(14) New livestock waste control facility means any livestock waste control facility for which a construction permit, an operating permit, a National Pollutant Discharge Elimination System permit, a construction approval, or a construction and operating permit, or an application therefor, is submitted on or after April 15, 1998;

(15) Operating permit means a permit issued prior to December 1, 2006, by the department after the completion of the livestock waste control facility in accordance with the construction approval and the submittal of a completed certification form to the department;

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

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

Source: Laws 1998, LB 1209, § 2; Laws 1999, LB 870, § 5; R.S.Supp.,2002, § 54-2402; Laws 2004, LB 916, § 6; Laws 2006, LB 975, § 2.

54-2418. Department; duties. The department shall (1) administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System of the federal Clean Water Act, 33 U.S.C. 1251 et seq., through the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts and (2) administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

Source: Laws 2004, LB 916, § 7; Laws 2006, LB 975, § 3.

54-2419. Permits; approval; conditions; restrictions. (1) No new animal feeding operation shall be issued a National Pollutant Discharge Elimination System permit or a construction and operating permit in any part of a watershed that feeds directly or indirectly into a cold water class A stream, delineated pursuant to section 54-2421.

(2) An existing animal feeding operation may not expand if its livestock waste control facility is located within one mile of a designated cold water class A stream segment delineated pursuant to section 54-2421 and the same cold water class A stream

watershed as the animal feeding operation, except that an existing animal feeding operation used for research sponsored by the University of Nebraska at a facility owned by the University of Nebraska may expand if the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(3) Existing animal feeding operations may receive a new or modified National Pollutant Discharge Elimination System permit, a new or modified construction and operating permit, a modified operating permit, or a modified construction approval if:

(a) The existing animal feeding operation does not currently have a National Pollutant Discharge Elimination System permit or a construction and operating permit and upon inspection by the department a determination is made that one is necessary;

(b) The existing animal feeding operation modifies its operation but does not expand its approved livestock waste control facility;

(c) The existing animal feeding operation's livestock waste control facility is located more than two miles from a designated cold water class A stream segment delineated pursuant to section 54-2421 and in the same cold water class A stream watershed as the animal feeding operation; or

(d) The existing animal feeding operation or livestock waste control facility is located less than two miles but more than one mile from a cold water class A stream delineated pursuant to section 54-2421, and the department determines based on scientific information provided in the application or other available scientific information that the proposed expansion does not pose a potential threat to the stream.

(4) The department may deny or restrict an application for a transfer or major modification of an existing National Pollutant Discharge Elimination System permit or a construction and operating permit based upon the potential degradation of a cold water class A stream.

Source: Laws 1998, LB 1209, § 4; Laws 1999, LB 822, § 8;
Laws 1999, LB 870, § 7; R.S.Supp.,2002, § 54-2404;
Laws 2004, LB 916, § 8; Laws 2006, LB 975, § 4.

54-2420. Section; how construed. Nothing in section 54-2419 shall be construed to change the zoning authority of a county that existed prior to May 25, 1999.

Source: Laws 1999, LB 822, § 10; R.S.Supp.,2002, § 54-2404.01;
Laws 2004, LB 916, § 9.

54-2421. Cold water class A streams; designation. A map delineating segments and watershed boundaries for cold water class A streams, as designated prior to May 25, 1999, and prepared by the Department of Environmental Quality and the Department of Natural Resources, shall be maintained by the Department of Environmental Quality and used by the department for determinations made concerning cold water class A streams and stream watersheds under the Livestock Waste Management Act unless changed by the council. Beginning on May 25, 1999, the council may designate and may redesignate previously designated waters of this state as cold water class A streams for purposes of the act based on the determination by the council that the waters provide or could provide habitat of sufficient water volume or flow, water quality, substrate composition, and water temperature capable of maintaining year-round

populations of cold water biota, including reproduction of a salmonoid (trout) population. The council shall not designate or redesignate a stream as a cold water class A stream unless the stream has supported the reproduction of a salmonoid (trout) population within the previous five years. The department shall revise and maintain the cold water class A stream and stream watershed map to incorporate all designations and redesignations of the council.

Source: Laws 1999, LB 822, § 9; Laws 2000, LB 900, § 242; R.S.Supp.,2002, § 54-2404.02; Laws 2004, LB 916, § 10.

54-2422. Inspection and construction and operating permit requirements; exemptions. Animal feeding operations with animal capacity that is less than three hundred cattle, two hundred mature dairy cattle, seven hundred fifty swine weighing fifty-five pounds or more per head, three thousand swine weighing less than fifty-five pounds per head, one thousand five hundred ducks with liquid manure handling system, ten thousand ducks without liquid manure handling system, nine thousand chickens with liquid manure handling system, thirty-seven thousand five hundred chickens without liquid manure handling system, twenty-five thousand laying hens without liquid manure handling system, sixteen thousand five hundred turkeys, three thousand sheep, or one hundred fifty horses are exempt from the inspection and construction and operating permit requirements of the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated by the council pursuant to such acts, unless the animal feeding operation has discharged pollutants to waters of the state or the department has determined that such a discharge is more likely than not to occur.

Source: Laws 2004, LB 916, § 11; Laws 2006, LB 975, § 5.

54-2423. Animal feeding operation; request inspection; when; fees; department; duties. (1) If any person owning or operating an animal feeding operation (a) does not hold a National Pollutant Discharge Elimination System permit, an operating permit, or a construction and operating permit or have construction approval, (b) has not been notified by the department that no National Pollutant Discharge Elimination System permit or construction and operating permit is required, or (c) is not exempt under section 54-2422, such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required. If an inspection is requested prior to January 1, 1999, an inspection fee for such inspection shall not be assessed. For inspections requested on or after July 16, 2004, there shall be an inspection fee established by the council with a minimum fee of one hundred dollars and a maximum fee of five hundred dollars. Such fee may be set according to animal capacity.

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

(3) Any person required to request an inspection under this section who operates an animal feeding operation after January 1, 2000, except an animal feeding operation exempted by the department from National Pollutant Discharge Elimination System

permit requirements prior to July 16, 2004, without first submitting the request for inspection required under this section shall be assessed, except for good cause shown, a late fee of not less than fifty dollars nor more than five hundred dollars for each offense. Each month a violation continues shall constitute a separate offense.

Source: Laws 1998, LB 1209, § 6; Laws 1999, LB 870, § 8; R.S.Supp.,2002, § 54-2406; Laws 2004, LB 916, § 12; Laws 2006, LB 975, § 6.

54-2424. Animal feeding operation; operating requirements; when. Any animal feeding operation which was in existence on January 1, 2004, and does not have any permit on March 17, 2006, shall be subject, in addition to any other requirements of the Environmental Protection Act, Livestock Waste Management Act, and rules and regulations adopted and promulgated pursuant to such acts, to the same or substantially similar operating requirements as the requirements that existed on January 1, 2004.

Source: Laws 2004, LB 916, § 13; Laws 2006, LB 975, § 7.

54-2425. National Pollutant Discharge Elimination System permit; department; duties. (1) After an initial inspection has been conducted pursuant to section 54-2423 for each new application for a construction and operating permit or major modification submitted to the department, the department shall, within ten days, make a determination as to whether a National Pollutant Discharge Elimination System permit is required for the proposed animal feeding operation. If an application has been submitted prior to an initial inspection being conducted pursuant to section 54-2423, such application shall be returned to the applicant without the department conducting any review of the application.

(2) If it is determined that a National Pollutant Discharge Elimination System permit is required, the department shall contact the applicant to determine whether the applicant requests the department to delay review of the construction and operating permit or major modification application until an individual National Pollutant Discharge Elimination System permit application is submitted.

(3) If the applicant requests the department to delay review of the construction and operating permit or major modification application, upon receipt of the individual National Pollutant Discharge Elimination System permit application and the construction and operating permit or major modification application, the applications shall be reviewed simultaneously utilizing the processes and timelines for review of an individual National Pollutant Discharge Elimination System permit application.

(4) If (a) the department determines a National Pollutant Discharge Elimination System permit is not required or (b) if the applicant requests the department to proceed with review of the construction and operating permit or major modification application independent of a National Pollutant Discharge Elimination System permit application, the department shall, for both subdivisions (4)(a) and (4)(b) of this section:

(i) Within five days send a copy of the application to the natural resources district or districts and the county board or boards of the counties in which the livestock waste control facility is located or proposed to be located. The natural resources district or districts and the county board or boards shall have thirty days to comment to the department regarding any conditions that may exist at the proposed site which the

department should consider regarding the content of the application for a construction and operating permit or major modification;

(ii) Within sixty days, (A) issue a proposed decision on the application for a construction and operating permit or major modification and (B) issue a notice providing an opportunity for any interested person to submit written comments on such proposed decision within thirty days after the first day of publication of such notice. The notice shall be published in a daily or weekly newspaper or other publication with general circulation in the area of the existing or proposed animal feeding operation, and a copy of the notice shall be provided to the applicant; and

(iii) Within one hundred ten days approve or deny the application and transmit its findings and conclusions to the applicant.

Source: Laws 2004, LB 916, § 14; Laws 2006, LB 975, § 8.

54-2426. Applications; contents. Each application for a National Pollutant Discharge Elimination System permit or construction and operating permit shall include, in addition to other requirements, (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application and (2) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged. The nutrient management plan shall be considered a part of the application. For National Pollutant Discharge Elimination System permits, the plan shall, at a minimum, meet and conform to the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq. A copy of the nutrient management plan and supporting documentation shall continuously be kept on file at the department. The operator shall at least annually update changes made to the nutrient management plan as required pursuant to rules and regulations adopted and promulgated by the council. For a construction and operating permit, the plan shall contain, at a minimum, the information which the department required to be included in all nutrient management plans on January 1, 2004.

Source: Laws 2004, LB 916, § 15; Laws 2006, LB 975, § 9.

54-2427. Public participation; when. Once the department has made a determination to approve or deny an application for a National Pollutant Discharge Elimination System permit, the department shall provide opportunities for public participation, including, but not limited to, public comment, opportunity for public hearing, and agency response to comments, which are at least as stringent as the requirements of the National Pollutant Discharge Elimination System in the federal Clean Water Act, 33 U.S.C. 1251 et seq.

Source: Laws 2004, LB 916, § 16.

54-2428. National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report. (1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control

facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

Source: Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10;
R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17;
Laws 2006, LB 975, § 10.

54-2429. National Pollutant Discharge Elimination System permit; construction and operating permit; application; approval from Department of

Natural Resources; Department of Environmental Quality; powers. (1) An applicant for a National Pollutant Discharge Elimination System permit or a construction and operating permit under the Environmental Protection Act or the Livestock Waste Management Act shall, before issuance by the Department of Environmental Quality, obtain any necessary approvals from the Department of Natural Resources under the Safety of Dams and Reservoirs Act and certify such approvals to the Department of Environmental Quality. The Department of Environmental Quality, with the concurrence of the Department of Natural Resources, may require the applicant to obtain approval from the Department of Natural Resources for any dam, holding pond, or lagoon structure which would not otherwise require approval under the Safety of Dams and Reservoirs Act but which in the event of a failure could result in a significant discharge into waters of the state and have a significant impact on the environment. The Department of Environmental Quality may provide for the payment of such costs of the Department of Natural Resources with revenue generated under section 54-2428.

(2) The department may require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if after an inspection: (a) The department determines that the facility has (i) visible signs of structural breakage below the permanent pool, (ii) signs of discharge or proven discharge due to structural weakness, (iii) improper maintenance, or (iv) inadequate capacity; or (b) the department has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the Environmental Protection Act, the Livestock Waste Management Act, or any rules or regulations adopted and promulgated under such acts. Animal feeding operations not required to have a permit under the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts are exempt from the Engineers and Architects Regulation Act.

Source: Laws 1998, LB 1209, § 12; Laws 1999, LB 870, § 13;
Laws 2000, LB 900, § 243; Laws 2003, LB 619, § 16;
R.S.Supp.,2003, § 54-2412; Laws 2004, LB 916, § 18;
Laws 2005, LB 335, § 80; Laws 2006, LB 975, § 11.

54-2430. Surface water runoff; diversion requirements; increase in acreage limitation; conditions. (1) Except as provided in this section, no new livestock waste control facility shall be constructed and no physical onsite activities specific to a new livestock waste control facility, except the use of a borrow site for construction of other components of the animal feeding operation, shall be initiated unless surface water runoff from the upstream area, except incidental runoff, is adequately diverted around the structure and is not permitted to enter the reservoir area. For purposes of this section, incidental runoff means the runoff that drains from the slope of the embankments, the top of the dam, the reservoir area, the feedlots, the associated roadways, and up to twenty-five acres of additional area that cannot be diverted. Incidental runoff capacity from a twenty-five-year frequency, twenty-four-hour storm shall be provided for in the waste reservoir in addition to the capacity required for the waste effluent or stored materials.

(2) The Department of Natural Resources shall permit a requested increase in the twenty-five-acre limitation for a new livestock waste control facility for an animal feeding operation for which an inspection was requested prior to January 1, 2000, unless the

department determines that the detriment to existing water users that would result from permitting the acreage increase would outweigh the detriment to the operator of the animal feeding operation if the increase were not permitted.

(3) For other new livestock waste control facilities, the Department of Natural Resources may permit an increase in the twenty-five-acre limitation if it determines that (a) the applicant has no reasonable way to limit the amount of the additional runoff acreage to twenty-five acres or less at the proposed location of the livestock waste control facility, (b) the applicant has no reasonable alternative for relocating the livestock waste control facility so that the additional runoff acreage would not exceed twenty-five acres, and (c) either (i) an increase in the permitted runoff acreage would not reduce water supplies to the detriment of existing water users or (ii)(A) the requested facility is for a proposed expansion of an animal feeding operation in existence and in compliance with the Livestock Waste Management Act as of January 1, 2003, (B) the amount of the runoff acreage permitted in excess of the twenty-five-acre limitation is not more than fifteen percent of total permitted feedlot area, and (C) any detriment to existing water users that would result from permitting the acreage increase would be outweighed by the detriment to the operator of the animal feeding operation if the increase were not permitted.

Source: Laws 2003, LB 619, § 17; R.S. Supp., 2003, § 54-2415; Laws 2004, LB 916, § 19.

54-2431. Applications; rejection; when; disciplinary actions. (1) The department shall reject an application for a National Pollutant Discharge Elimination System permit, construction and operating permit, or major modification or revoke or suspend a National Pollutant Discharge Elimination System permit or construction and operating permit upon a finding that the applicant or permittee is unsuited to perform the obligations of a permitholder.

(2) The applicant or permittee shall be determined unsuited to perform the obligations of a permitholder if the department finds that within the past five years the applicant or permittee:

(a) Has allowed three discharges to waters of the state at any facility in Nebraska owned or operated by the applicant unless the discharge is in compliance with National Pollutant Discharge Elimination System permit conditions, if applicable, and rules and regulations adopted and promulgated under the Livestock Waste Management Act and the department was notified in accordance with the rules and regulations; or

(b) Has a criminal conviction for a violation of section 81-1506 or a felony criminal conviction for violation of the environmental law in any jurisdiction.

Source: Laws 2004, LB 916, § 20; Laws 2006, LB 975, § 12.

54-2432. Acts prohibited. Except as provided in section 54-2422, it shall be unlawful for any person to:

(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department, unless exempted from the requirement for a construction and operating permit by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts. The use of a borrow site for construction of other components of the animal feeding operation does not constitute construction of the livestock waste control facility;

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

Source: Laws 2004, LB 916, § 21; Laws 2006, LB 975, § 13.

54-2433. Department; contracts authorized. In carrying out its responsibilities under the Livestock Waste Management Act, the department may contract with the various natural resources districts as appropriate. The contract may include all tasks or duties necessary to carry out the act but shall not enable the natural resources districts to issue National Pollutant Discharge Elimination System permits or construction and operating permits or initiate enforcement proceedings. The contract may provide for payment of natural resources districts' costs by the department.

Source: Laws 1998, LB 1209, § 11; Laws 1999, LB 870, § 12;
R.S.Supp.,2002, § 54-2411; Laws 2004, LB 916, § 22;
Laws 2006, LB 975, § 14.

54-2434. Enforcement of act; legislative intent. It is the intent of the Legislature that in enforcing the provisions of the Livestock Waste Management Act the department shall give priority to the larger animal feeding operations in the state.

Source: Laws 1998, LB 1209, § 14; R.S.1943, (1998), § 54-2414;
Laws 2004, LB 916, § 23.

54-2435. Council; rules and regulations. (1) The council shall adopt and promulgate rules and regulations for animal feeding operations under the Environmental Protection Act and the Livestock Waste Management Act which provide for:

(a) Requirements for animal feeding operations which shall include:

(i) Location restrictions and setbacks to protect waters of the state;

(ii) Applications and inspection requests;

(iii) Identification of ownership;

(iv) Numbers, size, and types of animals;

(v) Type of waste control facility;

(vi) Design, construction, operation, and maintenance;

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

(viii) Nutrient management, a nutrient management plan to be submitted with the application for a National Pollutant Discharge Elimination System permit or a construction and operating permit, and a description of the types of changes made to the nutrient management plan required to be updated pursuant to section 54-2426;

(ix) Closure and corrective action;

(x) Best management practices; and

(xi) Other such requirements deemed necessary to protect waters of the state;

(b) A National Pollutant Discharge Elimination System permit process for animal feeding operations;

(c) National Pollutant Discharge Elimination System permit issuance, denial, renewal, revocation, suspension, termination, or transfer;

(d) Training requirements for permitholders;

(e) Construction and operating permit issuance, denial, revocation, termination, or transfer;

(f) Construction and operating permit and National Pollutant Discharge Elimination System permit major modification issuance, denial, revocation, suspension, or termination;

(g) Public notice and hearing requirements;

(h) Requirements for existing livestock waste control facilities;

(i) Requirements for adequate area and proper methods and rates for land application of waste and nutrients such as nitrogen and phosphorus;

(j) Requirements for record keeping and reporting;

(k) A fee schedule pursuant to sections 54-2423 and 54-2428;

(l) Procedures for collection of fees pursuant to this section and sections 54-2423 and 54-2428; and

(m) Procedures for exemptions as provided for in the requirements of the Environmental Protection Act and the Livestock Waste Management Act.

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

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

(4) Rules and regulations adopted pursuant to this section shall be no less stringent than the federal Clean Water Act, 33 U.S.C. 1251 et seq.

This sheet should be placed between pages 224 and 225 of the October 2006 NEPA Book.

Section 54-2436. Reinstatement of operating permit; conditions; fee. (1) Any person who held an operating permit on December 31, 2005, and whose permit expired pursuant to rules and regulations may file a request for reinstatement of the operating permit subject to the following conditions:

(a) The request must be filed on or before December 31, 2007;

(b) The person shall certify that the livestock operation is in compliance with the operating permit as it existed on the date the operating permit expired; and

(c) The request shall be accompanied by a twenty-five-dollar nonrefundable filing fee.

(2) The department shall, upon receipt of a complete and timely request for reinstatement, reinstate the permit with the same conditions as existed when the permit expired.

Source: Laws 2006, LB 975, § 16.

Section 54-2437. Conditional use permit or special exception; county planning commission or county board; powers. (1) A county planning commission or county board shall grant a conditional use permit or special exception to an existing animal feeding operation seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and the construction or modification of the livestock waste control facility will not increase the animal capacity of such operation. The number of conditional use permits or special exceptions granted to such an operation under this subsection is unlimited.

(2) A county planning commission or county board shall grant a conditional use permit or special exception to an existing beef cattle or dairy cattle animal feeding operation that has an animal capacity of five thousand or fewer beef cattle or three thousand five hundred or fewer dairy cattle that is seeking to construct or modify a livestock waste control facility if the purpose is to comply with federal or state regulations pertaining to livestock waste management, the operation has complied with inspection requirements pursuant to section 54-2423, and construction or modification of the livestock waste control facility would allow the animal capacity of the operation to increase not more than:

(a) Five hundred beef cattle if the operation has an existing animal capacity of three thousand beef cattle or fewer;

(b) Three hundred beef cattle if the operation has an existing animal capacity of more than three thousand beef cattle but no more than five thousand beef cattle;

(c) Three hundred fifty dairy cattle if the operation has an existing animal capacity of two thousand dairy cattle or fewer; or

(d) Two hundred ten dairy cattle if the operation has an existing animal capacity of more than two thousand dairy cattle but no more than three thousand five hundred dairy cattle.

Only one conditional use permit or special exception per operation is allowed under this subsection.

Source: Laws 2006, LB 975, § 17.

Section 54-2438. Major modification; applications; contents. Each application for a major modification of an operating permit, a construction approval, a construction and operating permit, or a National Pollutant Discharge Elimination System permit or an application for a construction and operating permit or a National Pollutant Discharge Elimination System permit shall contain (1) a certification that the information contained in the application is accurate to the best of the applicant's knowledge and belief and that the applicant has the authority under the laws of the State of Nebraska to sign the application, (2) a detailed description of the major modification requested, (3) a completed nutrient management plan and supporting documentation unless such information has been previously submitted and is unchanged, and (4) such information as required by rules and regulations adopted and promulgated by the council.

Source: Laws 2006, LB 975, § 18.

(5) If a conflict arises between the authority of the council under the Environmental Protection Act and the authority of the council under the Livestock Waste Management Act, the authority of the council under the Livestock Waste Management Act shall control.

Source: Laws 1998, LB 1209, § 13; Laws 1999, LB 870, § 14; R.S.Supp.,2002, § 54-2413; Laws 2004, LB 916, § 24; Laws 2006, LB 975, § 15.

CONTROL OF SMOKE EMISSIONS AND NOISE

60-6,363. Terms, defined. For purposes of sections 60-6,363 to 60-6,374:

(1) Diesel-powered motor vehicle shall mean a self-propelled vehicle which is designed primarily for transporting persons or property on a highway and which is powered by an internal combustion engine of the compression ignition type;

(2) Motor vehicle shall mean a self-propelled vehicle with a gross unloaded vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration which is towed by such a vehicle;

(3) Smoke shall mean the solid or liquid matter, except water, discharged from a motor vehicle engine which obscures the transmission of light;

(4) Smokemeter shall mean a full-flow, light-extinction smokemeter of a type approved by the Department of Environmental Quality and operating on the principles described in the federal standards;

(5) Opacity shall mean the degree to which a smoke plume emitted from a diesel-powered motor vehicle engine will block the passage of a beam of light expressed as a percentage; and

(6) Smoke control system shall mean a system consisting of one or more devices and adjustments designed to control the discharge of smoke from diesel-powered motor vehicles.

Source: Laws 1972, LB 1360, § 1; Laws 1976, LB 823, § 3; R.S.1943, (1988), § 60-2201; Laws 1993, LB 370, § 459; Laws 1993, LB 3, § 35.

60-6,364. Applicability of sections. Sections 60-6,363 to 60-6,374 shall apply to all diesel-powered motor vehicles operated within this state with the exception of the following:

(1) Emergency vehicles operated by federal, state, and local governmental authorities;

(2) Vehicles which are not required to be registered in accordance with the Motor Vehicle Registration Act;

(3) Vehicles used for research and development which have been approved by the Director of Environmental Quality;

(4) Vehicles being operated while undergoing maintenance;

(5) Vehicles operated under emergency conditions;

(6) Vehicles being operated in the course of training programs which have been approved by the director; and

(7) Other vehicles expressly exempted by the director.

Source: Laws 1972, LB 1360, § 2; R.S.1943, (1988), § 60-2202; Laws 1993, LB 370, § 460; Laws 2005, LB 274, § 251.

60-6,365. Diesel-powered motor vehicle; smoke; shade, density, or opacity. No one shall operate a diesel-powered motor vehicle on any highway in this state in such a manner that smoke discharged from the exhaust is of a shade or density equal to or darker than that designated as Number 1 of the Ringelmann Chart or equivalent opacity of twenty percent for ten consecutive seconds or longer.

Source: Laws 1972, LB 1360, § 3; Laws 1976, LB 823, § 4; R.S.1943, (1988), § 60-2203; Laws 1993, LB 370, § 461.

60-6,366. Smoke control system; removal or change; prohibited; exception. No one shall intentionally make a change or other alteration to any diesel-powered motor vehicle equipped by its manufacturer with a smoke control system, including the basic fuel system, that may limit the ability of the system to control smoke, and no one shall remove such a smoke control system except for repair or installation of a proper replacement.

Source: Laws 1972, LB 1360, § 4; Laws 1976, LB 823, § 5; R.S.1943, (1988), § 60-2204; Laws 1993, LB 370, § 462.

60-6,367. Enforcement of sections; citations; use of smokemeter; results; admissible as evidence. (1) Officials of the Department of Environmental Quality and local enforcement officials shall have the authority to issue citations to suspected violators of sections 60-6,363 to 60-6,374 on the basis of their visual evaluation of the smoke emitted from a diesel-powered motor vehicle. A citation shall give the suspected violator a reasonable time to furnish evidence to the department that such alleged violation has been corrected or else such suspected violator shall be subject to the penalties set out in section 60-6,373. A suspected violator may demand that the suspected vehicle be tested by an approved smokemeter prior to a trial on the alleged violation.

(2) Smokemeter tests shall be conducted (a) by or under the supervision of a person or testing facility authorized by the Director of Environmental Quality to conduct such tests and (b) by installing an approved smokemeter on the exhaust pipe and operating the suspected vehicle at engine revolutions per minute equivalent to the engine revolutions per minute at the time of the alleged violation.

(3) The results of smokemeter tests run in accordance with this section and after the alleged violation shall be admissible as evidence in legal proceedings.

Source: Laws 1972, LB 1360, § 5; Laws 1976, LB 823, § 6; R.S.1943, (1988), § 60-2205; Laws 1993, LB 370, § 463; Laws 1993, LB 3, § 36.

60-6,368. Director of Environmental Quality; powers; rules and regulations; control of noise or emissions. (1) The Director of Environmental Quality shall have the power, after public hearings on due notice, to adopt and promulgate, consistent with and in furtherance of the provisions of sections 60-6,363 to 60-6,374, rules and regulations in accordance with which he or she will carry out his or her responsibilities and obligations under such sections.

(2) Any rules or regulations promulgated by the director shall be consistent with the provisions of the federal standards, if any, relating to control of emissions from the

diesel-powered motor vehicles affected by such rules and regulations. The director shall not require, as a condition for the sale of any diesel-powered motor vehicle covered by sections 60-6,363 to 60-6,374, the inspection, certification, or other approval of any feature or equipment designed for the control of noise or emissions from such diesel-powered motor vehicles if such feature or equipment has been certified, approved, or otherwise authorized pursuant to laws or regulations of any federal governmental body as sufficient to make lawful the sale of any diesel-powered motor vehicle covered by such sections.

Source: Laws 1972, LB 1360, § 6; Laws 1976, LB 823, § 7; R.S.1943, (1988), § 60-2206; Laws 1993, LB 370, § 464.

60-6,369. Noise; restrictions. No person shall sell, or offer for sale, a new motor vehicle with a gross vehicle weight of ten thousand pounds or more that produces a maximum noise exceeding a noise limit of 80dB(A) at a distance of fifty feet from the centerline of travel under test procedures established by section 60-6,372.

Source: Laws 1972, LB 1360, § 7; Laws 1979, LB 140, § 1; R.S.1943, (1988), § 60-2207; Laws 1993, LB 370, § 465.

60-6,370. Operation; noise; limitation. No person shall operate within the speed limits specified in this section either a motor vehicle with a gross vehicle weight of ten thousand pounds or more or any combination of vehicles of a type subject to registration, towed by such motor vehicle, at any time or under any condition of grade, load, acceleration, or deceleration in such manner as to exceed the following noise limit based on a distance of not less than fifty feet from the centerline of travel under test procedures established by section 60-6,372: When the posted speed limit is thirty-five miles per hour or less, the noise limit shall not exceed 86dB(A), and when the posted speed limit is more than thirty-five miles per hour, the noise limit shall not exceed 90dB(A). This section shall apply to the total noise from a vehicle or combination of vehicles and shall not be construed as limiting or precluding the enforcement of any other provisions of sections 60-6,363 to 60-6,374 relating to motor vehicle mufflers for noise control.

Source: Laws 1972, LB 1360, § 8; Laws 1976, LB 823, § 8; R.S.1943, (1988), § 60-2208; Laws 1993, LB 370, § 466.

60-6,371. Exhaust or intake muffler; change; increase of noise; prohibited. No person shall modify or change the exhaust muffler, the intake muffler, or any other noise-abatement device of a motor vehicle in a manner such that the noise emitted by the motor vehicle is increased above that emitted by the vehicle as originally manufactured. Procedures used to establish compliance with this section shall be those used to establish compliance of a new motor vehicle with the requirements of sections 60-6,363 to 60-6,374.

Source: Laws 1972, LB 1360, § 9; R.S.1943, (1988), § 60-2209; Laws 1993, LB 370, § 467.

60-6,372. Noise measurement tests; manner conducted; conditions; enumerated. (1) Noise measurements shall be made at a test site which is adjacent to and includes a portion of a roadway. A microphone target point shall be established on

the centerline of the roadway, and a microphone location point shall be established on the ground surface at a distance of fifty feet from the microphone target point and on a line that is perpendicular to the centerline of the roadway and that passes through the microphone target point. The microphone shall be placed such that it is at a height of not less than two feet and not more than six feet above the plane of the roadway surface. The test area shall include an open site within a fifty-foot radius of both the microphone target point and the microphone location point. The test site shall be essentially free of large sound-reflecting objects.

(2) Noise measurement conditions shall be as follows:

(a) Noise measurements may only be made if the measured average wind velocity is twelve miles per hour or less. Gust wind measurements of up to twenty miles per hour shall be allowed;

(b) Measurements shall be prohibited under any condition of precipitation, but measurements may be made with snow on the ground. The ground surface within the measurement area shall be free of standing water; and

(c) Road conditions shall be such that they would not cause a motor vehicle to emit irregular tire, body, or chassis-impact noise.

(3) In accordance with this section, a measurement shall be made of the sound level generated by a motor vehicle operating through the measurement area on the traveled portion of the highway within the test site, regardless of the highway grade, load, acceleration, or deceleration. The sound level generated by the motor vehicle shall be the highest reading observed on the sound level measurement system as the vehicle passes through the measurement area.

Source: Laws 1972, LB 1360, § 10; Laws 1976, LB 823, § 9;
R.S.1943, (1988), § 60-2210; Laws 1993, LB 370, § 468.

60-6,373. Standards; violations; penalty. Every person who operates a diesel-powered or other motor vehicle in this state in violation of the standards established by sections 60-6,363 to 60-6,374 shall be guilty of a Class V misdemeanor, and every day that the diesel-powered or other motor vehicle is so operated shall be deemed to be a separate offense.

Source: Laws 1972, LB 1360, § 11; Laws 1977, LB 39, § 105;
R.S.1943, (1988), § 60-2211; Laws 1993, LB 370, § 469.

60-6,374. Sections; exclusive treatment. The provisions of sections 60-6,363 to 60-6,374 shall be exclusive and prevail over other provisions of law in this state or any of its subdivisions applied to smoke from diesel-powered motor vehicles.

Source: Laws 1972, LB 1360, § 12; R.S.1943, (1988), § 60-2212;
Laws 1993, LB 370, § 470.

PETROLEUM RELEASE REMEDIAL ACTION ACT

66-1501. Act, how cited. Sections 66-1501 to 66-1532 shall be known and may be cited as the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 1; Laws 1991, LB 409, § 1;
Laws 1994, LB 1160, § 116; Laws 1996, LB 1226, § 1;
Laws 1998, LB 1161, § 26; Laws 2004, LB 962, § 103.

66-1502. Statement of purpose. (1) The Legislature restates the declaration of legislative purpose as set forth in section 81-1501 that the public policy of this state is hereby declared to be:

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

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

(c) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act.

(2) The Legislature finds that the number of leaking petroleum storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because petroleum contained in leaking storage tanks is a potential land and ground water contaminant and major fire and explosive hazard. Furthermore, owners of petroleum tanks may not have the ability to assess and clean up any releases from those petroleum tanks.

(3) The Legislature finds and declares that it is in the public interest that a distribution network for petroleum be available to the public in the State of Nebraska. It is essential in this state to encourage owners of petroleum tanks across the state to remain in business to maintain the viability of the distribution network. At the present time, meeting financial responsibility requirements imposed by the federal government has placed a burden on the owners of petroleum tanks that jeopardizes their ability to store and distribute petroleum and to remain a part of the distribution network.

Source: Laws 1989, LB 289, § 2.

66-1503. Definitions, where found. For purposes of the Petroleum Release Remedial Action Act, the definitions found in sections 66-1504 to 66-1515.01 shall be used.

Source: Laws 1989, LB 289, § 3; Laws 1991, LB 409, § 2;
Laws 1994, LB 1160, § 117.

66-1504. Department, defined. Department shall mean the Department of Environmental Quality.

Source: Laws 1989, LB 289, § 4; Laws 1993, LB 3, § 38.

66-1506. Fund, defined. Fund shall mean the Petroleum Release Remedial Action Cash Fund created in section 66-1519.

Source: Laws 1989, LB 289, § 6.

66-1507. Importer, defined. Importer shall mean any person who imports or causes to be imported petroleum from any other state or territory of the United States or from a foreign country for such person's own use in or for sale in this state, whether or

not in the original package, receptacle, or container. Importer shall not include a person who imports petroleum in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected.

Source: Laws 1989, LB 289, § 7.

66-1508. Operator, defined. Operator shall mean a person in control of or having responsibility for the daily operation of a tank. Operator shall not include a person described in subsection (2) of section 66-1509.

Source: Laws 1989, LB 289, § 8; Laws 1991, LB 409, § 3.

66-1509. Owner, defined. (1) Owner shall mean:

(a) In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use, or dispensing of petroleum; and

(b) In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(2) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(a) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(b) Acquires ownership of a tank or the property on or within which a tank is or was located:

(i) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(ii) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(3) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.

Source: Laws 1989, LB 289, § 9; Laws 1991, LB 409, § 4;
Laws 1996, LB 1226, § 3.

66-1510. Petroleum, defined. Petroleum shall mean:

(1) For purposes of the fee provisions of section 66-1521:

(a) Motor vehicle fuel as defined in section 66-482, except natural gasoline used as a denaturant by an ethanol facility as defined in section 66-1333; and

(b) Diesel fuel as defined in section 66-482, including kerosene which has been blended for use as a motor fuel; and

(2) For purposes of all provisions of the Petroleum Release Remedial Action Act other than the fee provisions of section 66-1521:

(a) The fuels defined in subdivision (1) of this section; and

(b) A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as such act existed on January 1, 2005.

Source: Laws 1989, LB 289, § 10; Laws 1994, LB 1160, § 119; Laws 1995, LB 182, § 64; Laws 1997, LB 517, § 1; Laws 2004, LB 983, § 65; Laws 2005, LB 298, § 1.

66-1511. Refiner, defined. Refiner shall mean any person who refines, prepares, blends, distills, manufactures, or compounds petroleum in Nebraska for such person's own use in this state or for sale or delivery in this state.

Source: Laws 1989, LB 289, § 11.

66-1512. Release, defined. Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils whether occurring before, on, or after May 27, 1989.

Source: Laws 1989, LB 289, § 12; Laws 1991, LB 409, § 5.

66-1513. Remedial action, defined. Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action ordered by the department or the State Fire Marshal which is reasonable and necessary. Remedial action shall not include:

(1) Tank restoration, upgrading, replacement, or rehabilitation;

(2) Actions which do not minimize, eliminate, or clean up a release or suspected release to protect the public safety, health, and welfare or the environment; or

(3) Aesthetic improvements.

Costs of remedial action shall not include costs for the actions specified in subdivisions (1) through (3) of this section, loss of income, attorney's fees, or reimbursement for the responsible person's own time spent in planning and administering a corrective action plan.

Source: Laws 1989, LB 289, § 13; Laws 1991, LB 409, § 6; Laws 1996, LB 1226, § 4.

66-1514. Responsible person, defined. Responsible person shall mean a person who is an owner or operator of a tank. If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:

(1) A person in the chain of title of a tank or in the property on or within which a tank is or was located;

(2) A person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(3) A person who has acquired ownership of a tank or the property on or within which a tank is or was located:

(a) Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or

(b) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

Such voluntary action shall not be construed to render such party responsible or liable for remedial action or payment of the claim.

Source: Laws 1989, LB 289, § 14; Laws 1991, LB 409, § 7; Laws 1996, LB 1226, § 5.

66-1514.01. Supplier, defined. Supplier shall mean any person who owns petroleum products imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state.

Source: Laws 1994, LB 1160, § 118.

66-1515. Tank, defined. Tank shall mean any one or a combination of stationary aboveground or underground containers and enclosures, including structures and appurtenances connected to them, that is or has been used to contain or dispense petroleum, but tank shall not include any pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. chapter 29, as in effect on January 1, 1988, or any lease production tank used in the production of crude oils.

Source: Laws 1989, LB 289, § 15.

66-1515.01. Third-party claim, defined. Third-party claim shall mean a final judgment against a responsible person obtained by a third party for compensation for bodily injury and property damage caused by a release first reported after January 1, 1990.

Source: Laws 1991, LB 409, § 8.

66-1516. Responsibility for release or third-party claim; avoidance; prohibited; when. Except as provided in section 81-15,124.05, no responsible person may avoid responsibility under state law for a release or third-party claim by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold-harmless, or similar agreement. This section shall not be construed to:

(1) Prohibit a responsible person from entering into an agreement by which the person is insured or is a member of a risk retention group and is thereby indemnified for part or all of the liability;

(2) Prohibit the enforcement of an insurance, hold-harmless, or indemnification agreement; or

(3) Bar a cause of action brought by a responsible person or by an insurer or guarantor, whether by right of subrogation or otherwise.

Source: Laws 1989, LB 289, § 16; Laws 1991, LB 409, § 9; Laws 2001, LB 461, § 1.

66-1517. Reimbursement for remedial actions and third-party claims; act; how construed. Reimbursement for remedial actions and third-party claims shall be governed by the Petroleum Release Remedial Action Act.

Nothing in the act shall be construed to limit the powers of the department or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under the act. The remedies provided by the act shall be in addition to those provided under existing statutory or common law.

For purposes of section 25-328, the state shall have an interest in any litigation which might result in a third-party claim.

Nothing in the act shall be construed to limit a person's duty to notify the department and the State Fire Marshal or to take other action related to a release as required pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act.

Source: Laws 1989, LB 289, § 17; Laws 1991, LB 409, § 10.

66-1518. Rules and regulations; schedule of rates; use; private insurance; report. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) Such rules and regulations shall take into account the recommendations for rules and regulations developed by the technical advisory committee established pursuant to section 81-15,189.

(3) The Director of Environmental Quality shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered;

(b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(4) The Department of Environmental Quality shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

(5) The Department of Environmental Quality and the Department of Insurance, in consultation with interested parties, shall report to the Legislature on or before December 1, 2001, on the availability and cost of private insurance to insure the damages for which payment may be made from the fund.

Source: Laws 1989, LB 289, § 18; Laws 1991, LB 409, § 11; Laws 1993, LB 3, § 39; Laws 1994, LB 1349, § 9; Laws 1996, LB 1226, § 6; Laws 1997, LB 517, § 2; Laws 1998, LB 1161, § 27; Laws 1999, LB 270, § 1; Laws 2001, LB 461, § 2.

66-1519. Petroleum Release Remedial Action Cash Fund; created; use; investment. (1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2009, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as

provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) expenses incurred by the technical advisory committee created in section 81-15,189 in carrying out its duties pursuant to section 81-15,190; (h) claims approved by the State Claims Board authorized under section 66-1531; (i) a grant to a city of the metropolitan class in the amount of three hundred thousand dollars, provided no later than September 15, 2005, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., as such act existed on October 1, 2003; and (j) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at the direction of the Legislature. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of each of the following years: 2004 through 2011.

(4) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12;
Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57;
Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28;
Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3;
Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7;
Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105;
Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4.

66-1519.01. Petroleum Release Remedial Action Cash Fund; transfer to Wastewater Treatment Facilities Construction Loan Fund; authorized; repayment; contracts authorized. (1) Prior to December 31, 1996, the department may authorize the State Treasurer to transfer funds from the Petroleum Release Remedial Action Cash Fund to the Wastewater Treatment Facilities Construction Loan Fund in such amount as determined by the department to be necessary to satisfy the state match requirement necessary to obtain federal capitalization grants under the federal Clean Water Act, as defined in section 81-15,149. The department may enter into contracts for repayment of such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such transfers. Such contracts may allow repayments to be completed on or after December 31, 1996.

(2) Prior to December 31, 1996, the department may authorize the State Treasurer to deposit amounts received from the Wastewater Treatment Facilities Construction Loan Fund, including amounts due from federal capitalization grants for the benefit of the Wastewater Treatment Facilities Construction Loan Fund, in the Petroleum Release

Remedial Action Cash Fund. The department may authorize the State Treasurer to repay such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such deposits, and the department may enter into contracts with respect thereto for the benefit of the Wastewater Treatment Facilities Construction Loan Fund. The terms of any such contracts or authorizations may end on or after December 31, 1996.

(3) The department may agree, in the contracts authorized under subsection (2) of this section, that specific amounts or sources of money in the Petroleum Release Remedial Action Cash Fund shall be obligated or pledged to the repayment of deposits from the Wastewater Treatment Facilities Construction Loan Fund, and that some or all of such specified amounts shall not be available to provide reimbursement pursuant to section 66-1523 or payments pursuant to section 66-1529.01 or 66-1529.02. Such specified amounts shall not exceed the amounts the department deems reasonably necessary to provide adequate security for the repayment of deposits. Any such pledge shall be valid and binding from the time the pledge is made, the amounts or sources of money so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, regardless of whether the parties have notice thereof, and no such pledge agreement need be recorded.

Source: Laws 1996, LB 1226, § 2; Laws 1998, LB 1161, § 29.

66-1520. Owner of registered tank; petroleum release remedial action fee; amount. (1) On each January 1, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee of ninety dollars to the State Fire Marshal for each registered tank.

(2) The State Fire Marshal shall remit the fees received pursuant to this section to the State Treasurer for credit to the fund.

Source: Laws 1989, LB 289, § 20; Laws 1991, LB 409, § 13; Laws 1998, LB 1161, § 30.

66-1521. (Operative date January 1, 2005.) Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment. (1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519.

The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twenty-fifth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed twenty-eight thousand dollars for each fiscal year. The twenty-eight thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14;
Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58;
Laws 1994, LB 1160, § 120; Laws 1997, LB 752, § 153;
Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31;
Laws 2004, LB 983, § 66.

66-1523. Reimbursement; amount; limitations; Prompt Payment Act applicable. (1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons for the cost of remedial action for releases reported after July 17,

1983, and on or before June 30, 2009, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2009, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 2009.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Source: Laws 1989, LB 289, § 23; Laws 1991, LB 409, § 16;
Laws 1993, LB 237, § 2; Laws 1996, LB 1226, § 9;
Laws 1998, LB 1161, § 32; Laws 1999, LB 270, § 3;
Laws 2001, LB 461, § 4; Laws 2004, LB 962, § 106.

66-1524. State not liable; when; payment of principal and interest on unpaid applications. The State of Nebraska shall not be liable for any reimbursement under the Petroleum Release Remedial Action Act in the event that the fund is insufficient to reimburse the amount set forth in section 66-1523. Interest on any unpaid application for reimbursement shall continue to accrue on the principal amount of the application pursuant to the Prompt Payment Act until the principal amount of the reimbursement is paid, except such interest is not a liability of the state and is not required to be paid during any period of time that the fund is insufficient to pay the reimbursement.

On and after April 16, 1996, the department shall pay any unpaid applications by first paying the principal amount of all unpaid applications and then any accrued interest on the unpaid applications, except that the department shall not pay interest on interest. Notwithstanding provisions of the Prompt Payment Act and for purposes of applications on file with the department on April 16, 1996, applicants shall request payment of interest within ninety days of such date. For applications filed after April 16, 1996, all provisions of the Prompt Payment Act shall apply.

Source: Laws 1989, LB 289, § 24; Laws 1996, LB 1226, § 10.

66-1525. Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required. (1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2009, or against whom there

is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Source: Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17;
Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10;
Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33;
Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5;
Laws 2004, LB 962, § 107.

66-1526. Reimbursement; not subject to legal process or attachment; when. The amount of reimbursement to be paid for remedial action which was done by a third party shall not be subject to legal process or attachment if paid to the responsible person for the purpose of payment to a third party who performed the remedial action.

Source: Laws 1989, LB 289, § 26.

66-1527. Failure to complete remedial action; reimburse fund. If the responsible person who has received partial reimbursement from the fund for remedial action does not complete the remedial action as required by the rules and regulations, the responsible person shall reimburse to the fund an amount equal to the reimbursements received from the fund.

Source: Laws 1989, LB 289, § 27.

66-1528. Person receiving conveyance; action; not barred. Nothing in the Petroleum Release Remedial Action Act shall be construed to bar a common-law, statutory, or any other cause of action which may be maintained against a responsible

person by a private person who, subsequent to a release, received a conveyance of any right, title, or interest in the parcel of real property on which such release occurred.

Source: Laws 1989, LB 289, § 28.

66-1529. Reimbursement; assignment; authorized. Nothing in the Petroleum Release Remedial Action Act shall be construed to prohibit a responsible person from assigning to a third party any right, title, or interest which the responsible person may have in and to the proceeds from reimbursement for remedial action. Such third party may be a designated representative for the purposes of the act.

Source: Laws 1989, LB 289, § 29.

66-1529.01. Remedial action; fixtures and tangible personal property; treatment. (1) The department shall reimburse the responsible person from the fund for damages to fixtures and costs of tangible personal property related to the remedial action as set forth in subsections (2) and (3) of this section.

(2) The responsible person shall be reimbursed from the fund for reasonable repair or replacement costs approved in a remedial action plan for fixtures which are damaged by the remedial action, except in the case of intentional acts or gross negligence by the responsible person or his or her agents. Costs for removal of fixtures are eligible for reimbursement at the time of site closure if such fixtures were a part of the approved remedial action. All fixtures reimbursed by the fund which are attached to real property are owned by the responsible person or the property owner, if different from the responsible person.

(3) The responsible person shall be reimbursed from the fund for the value of tangible personal property purchased by the responsible person and used in the remedial action. Reimbursement shall be according to the current schedule of reasonable rates made available by the department pursuant to section 66-1518. All tangible personal property reimbursed by the fund is owned by the state. The department may use tangible personal property reimbursed by the fund in other remedial actions, store such property until needed, maintain the property, or sell or dispose of such property in a manner beneficial to the fund. Any proceeds from the sale or disposal of such property shall be remitted to the State Treasurer for credit to the fund.

Source: Laws 1991, LB 409, § 18; Laws 1996, LB 1226, § 12;
Laws 1998, LB 1161, § 34.

66-1529.02. Remedial actions by department; third-party claims; recovery of expenses. (1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, 2009, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Source: Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41;
Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35;
Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6;
Laws 2004, LB 962, § 108.

66-1530. Department; federal funding; duty. The department shall cooperate in any action necessary to obtain federal funding to carry out the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 30.

66-1531. Claim under State Miscellaneous Claims Act authorized; procedure; limitations. A person, other than a responsible person, may file a claim with the State Claims Board under the State Miscellaneous Claims Act for (1) property damage caused by a release and (2) reasonable costs directly incurred due to uninhabitability of a dwelling or unfitness of a water supply caused by a release. For purposes of claims made under this section, property damage means damage to real estate or water well contaminated as a result of a release. Claims approved under this section shall be approved on the basis of merit and eligibility as set forth in section 66-1525. Claims approved under this section shall be reduced by any third-party claim, as defined in section 66-1515.01, for the same damage. A claim approved under this section shall not be considered to be from a collateral source in a judicial proceeding for the same damage. Any claim under this section shall be paid from the Petroleum Release Remedial Action Cash Fund within sixty days after the claim is approved pursuant to section 81-8,300, subject to section 66-1523. A claim approved under this section shall not exceed two hundred thousand dollars and the total claims paid for property damage shall not exceed eight hundred thousand dollars per occurrence.

Source: Laws 1998, LB 1161, § 25.

66-1532. Private insurance required; when. Beginning July 1, 2009, the owner of any new tank at a site where tanks have not been previously located shall be fully

insured through private insurance to cover the costs of any remedial action to such tank or the site on which such tank is located after such date.

Source: Laws 2004, LB 962, § 104.

DEGRADABLE PRODUCTS ACT

69-2001. Act, how cited. Sections 69-2001 to 69-2012 shall be known and may be cited as the Degradable Products Act.

Source: Laws 1989, LB 325, § 1.

69-2002. Definitions, where found. For purposes of the Degradable Products Act, the definitions found in sections 69-2003 to 69-2007 shall be used.

Source: Laws 1989, LB 325, § 2.

69-2003. Biodegradable, defined. Biodegradable shall mean degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gases and organic compounds.

Source: Laws 1989, LB 325, § 3.

69-2004. Degradable, defined. Degradable shall mean capable of decomposing or deteriorating through a natural chemical process into harmless components after exposure to natural elements for not more than one year.

Source: Laws 1989, LB 325, § 4.

69-2005. Photodegradable, defined. Photodegradable shall mean degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

Source: Laws 1989, LB 325, § 5.

69-2006. Recyclable, defined. Recyclable shall mean suitable for any process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering or reusing the resources contained therein.

Source: Laws 1989, LB 325, § 6.

69-2007. Retail, defined. Retail shall mean sale for use or consumption and not for resale in any form.

Source: Laws 1989, LB 325, § 7.

69-2008. Beverage container connectors; requirements. On and after January 1, 1991, a person shall not sell or offer for sale at retail any beverage for human consumption if the beverage container is connected to another beverage container by a device which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 8; Laws 1992, LB 1257, § 72.

69-2009. Garbage bags; requirements. On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for grass

clippings, garbage, yard waste, or leaves which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 9; Laws 1992, LB 1257, § 73.

69-2010. Grocery or shopping bags; requirements. On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for groceries or shopping which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 10.

69-2011. Disposable diapers; requirements; Director of Environmental Quality; duties. On and after October 1, 1993, a person shall not sell or offer for sale at retail any disposable diaper which is constructed of a material which is not biodegradable or photodegradable if the Director of Environmental Quality determines that biodegradable or photodegradable disposable diapers are readily available at a comparable price and quality. The determination of quality shall include a study of the environmental impact and fate of such disposable diapers. The director shall issue his or her determination to the Legislature on or before October 1, 1992. For purposes of this section (1) readily available shall mean available for purchase in sufficient quantities to meet demand through usual retail channels throughout the state and (2) comparable price and quality shall mean at a cost not in excess of five percent above the average price for products of comparable quality which are not biodegradable or photodegradable.

Source: Laws 1989, LB 325, § 11; Laws 1993, LB 3, § 42.

69-2012. Violations; penalty. Any person violating sections 69-2008 to 69-2011 shall be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 325, § 12.

PLASTIC CONTAINER CODING ACT

69-2501. Act, how cited. Sections 69-2501 to 69-2507 shall be known and may be cited as the Plastic Container Coding Act.

Source: Laws 1993, LB 63, § 1.

69-2502. Terms, defined. For purposes of the Plastic Container Coding Act:

(1) Code shall mean a molded, imprinted, or raised symbol on or near the bottom of a plastic bottle or rigid plastic container;

(2) Department shall mean the Department of Environmental Quality;

(3) Plastic shall mean any material made of polymeric organic compounds and additives that can be shaped by flow;

(4) Plastic bottle shall mean a plastic container intended for a single use that:

(a) Has a neck smaller than the body of the container;

(b) Is designed for a screw-top, snap cap, or other closure; and

(c) Has a capacity of not less than sixteen fluid ounces or more than five gallons; and

(5) Rigid plastic container shall mean any formed or molded container intended for a single use, composed predominately of plastic resin, that has a relatively inflexible

finite shape or form with a capacity of not less than eight ounces or more than five gallons. Rigid plastic container shall not include a plastic bottle.

Source: Laws 1993, LB 63, § 2.

69-2503. Conformity with industry standards; codes required; department; duties. (1) This section and any rules or regulations adopted and promulgated under the Plastic Container Coding Act shall be interpreted to conform with nationwide plastics industry standards.

(2) No person shall manufacture or distribute a plastic bottle or rigid plastic container unless such bottle or container is imprinted with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The codes shall be:

(a) 1 and PETE, representing polyethylene terephthalate;

(b) 2 and HDPE, representing high density polyethylene;

(c) 3 and V, representing vinyl;

(d) 4 and LDPE, representing low density polyethylene;

(e) 5 and PP, representing polypropylene;

(f) 6 and PS, representing polystyrene; and

(g) 7 and OTHER.

(4) The department shall maintain a list of the symbols and provide a copy of the list to any person on request.

Source: Laws 1993, LB 63, § 3.

69-2504. Violations; penalty; enforcement duties. (1) After being notified by the department that a plastic bottle or rigid plastic container does not comply with section 69-2503 or the rules and regulations promulgated under such section, a person violating such section shall be subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from further violations.

(2) For any violation of section 69-2503 or the rules and regulations promulgated under the Plastic Container Coding Act, the Attorney General or county attorney shall institute proceedings to recover the civil penalty imposed under this section.

Source: Laws 1993, LB 63, § 4.

69-2505. Environmental Quality Council; adopt rules and regulations. The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Plastic Container Coding Act.

Source: Laws 1993, LB 63, § 5.

69-2506. Administrative costs; limitation; payment. Administrative costs incurred in implementing the Plastic Container Coding Act shall not exceed five thousand dollars and shall be paid solely from the Integrated Solid Waste Management Cash Fund.

Source: Laws 1993, LB 63, § 6.

69-2507. Act; applicability. The Plastic Container Coding Act shall apply to plastic bottles and rigid plastic containers manufactured or distributed on or after January 1, 1994.

Source: Laws 1993, LB 63, § 7; Laws 2000, LB 819, § 83.

NEBRASKA SAFE DRINKING WATER ACT

71-5301. Terms, defined. For purposes of the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

(1) Council means the Advisory Council on Public Water Supply;

(2) Director means the Director of Regulation and Licensure or his or her authorized representative;

(3) Designated agent means any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the Nebraska Safe Drinking Water Act and with which the Director of Regulation and Licensure has consummated a legal and binding contract covering specifically delegated responsibilities;

(4) Major construction, extension, or alteration means those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but does not include the extension of service mains within established service areas;

(5) Operator means the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;

(6) Owner means any person owning or operating a public water system;

(7) Person means any individual, firm, partnership, limited liability company, association, company, corporation, political subdivision, or other entity;

(8) Water supply system means all sources of water and their surroundings under the control of one owner and includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;

(9) (a) Public water system means a system for providing the public with water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a noncommunity water system.

(b) Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.

(c) Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (b) (ii) or (iii) of this subdivision;

(10) Drinking water standards means rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels for harmful materials which, in the judgment of the Director of Regulation and Licensure, may have an adverse effect on the health of persons and (b) apply only to public water systems;

(11) Lead free (a) when used with respect to solders and flux means solders and flux containing not more than two-tenths percent lead, (b) when used with respect to pipes and pipe fittings means pipes and pipe fittings containing not more than eight percent lead, and (c) when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion means fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) as such section existed on July 16, 2004;

(12) Community water system means a public water system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents;

(13) Noncommunity water system means a public water system that is not a community water system;

(14) Nontransient noncommunity water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same individuals over six months per year;

(15) Small system means a public water system that regularly serves less than ten thousand individuals; and

(16) Probation means a disciplinary action not to exceed two years in length during which a certificate holder may continue to operate under terms and conditions fixed by the order of probation.

Source: Laws 1976, LB 821, § 1; Laws 1988, LB 383, § 1;
Laws 1993, LB 121, § 441; Laws 1996, LB 1044, § 712;
Laws 1997, LB 517, § 17; Laws 2001, LB 667, § 28;
Laws 2003, LB 31, § 3; Laws 2004, LB 1005, § 98.

71-5301.01. Pipe, pipe fitting, solder, or flux; lead free; requirements; inspection. (1) After July 1, 1988, any pipe, pipe fitting, solder, or flux which is used in the installation or repair of any public water system shall be lead free.

(2) By July 1, 1988, the owner of any public water system shall, by the adoption of plumbing codes or ordinances, contract, or other enforceable means, require that any solder or flux used in the installation or repair of any residential or nonresidential facility which is connected to the public water system be lead free.

(3) The owner of any public water system shall inspect the installation or repair of facilities described in subsection (2) of this section to determine compliance with such subsection.

(4) The owner of a public water system shall cause any joint or pipe in facilities described in subsection (2) of this section to be replaced if the owner or the director finds that such joint or pipe is not lead free.

(5) This section shall not apply to the repair of leaded joints in cast iron pipes in any public water system that are in existence and use on July 1, 1988.

Source: Laws 1988, LB 383, § 2; Laws 2001, LB 667, § 29.

71-5302. Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system. (1) The Director of Regulation and Licensure shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the Director of Regulation and Licensure to be harmful to human health.

(2) The Director of Regulation and Licensure may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water systems for chemical, radiological, physical, or bacteriological material determined by the Director of Regulation and Licensure to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the Director of Regulation and Licensure shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The Director of Regulation and Licensure may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act, as such section existed on May 22, 2001.

(6) The Director of Regulation and Licensure may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the Department of Health and Human Services Regulation and Licensure or the Department of Environmental Quality. In establishing the ranking system the Director of Regulation and Licensure shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, as the act existed on May 22, 2001, and assistance to systems most in need based upon affordability criteria adopted by the Director of Regulation and Licensure. This priority system shall be reviewed annually by the Director of Regulation and Licensure.

Source: Laws 1976, LB 821, § 2; Laws 1988, LB 383, § 3;
Laws 1997, LB 517, § 18; Laws 2001, LB 667, § 30.

71-5303. Public water system; permit; director; powers; hearing; appeal. (1) No person shall operate or maintain a public water system without first obtaining a permit to operate such system from the director. No fee shall be charged for the issuance of such permit.

(2) The director shall inspect public water systems and report findings to the owner, publish a list of those systems not in compliance, and promote the training of and certify the competence of operators. The director may deny, revoke, suspend, or refuse renewal of a permit or certification, place a certificate holder on probation, issue administrative orders scheduling action to be taken, take emergency action as provided in section 71-5304.01, and seek a temporary or permanent injunction or such other legal process as is deemed necessary to obtain compliance with the Nebraska Safe Drinking Water Act.

(3) The Department of Health and Human Services Regulation and Licensure may deny, revoke, suspend, or refuse to renew a permit or certification or place a certificate holder on probation for noncompliance with the act, the rules and regulations adopted and promulgated under the act, or the terms of a variance or exemption issued pursuant to section 71-5310.

(4) Any person shall be granted, upon request, an opportunity for a hearing before the department under the Administrative Procedure Act prior to the denial or revocation of a permit or certification or the placement of a certificate holder on probation. The denial, revocation, or the placement on probation by the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 821, § 3; Laws 1988, LB 383, § 4;
Laws 1988, LB 352, § 139; Laws 1996, LB 1044, § 713;
Laws 2000, LB 1115, § 77; Laws 2001, LB 667, § 31;
Laws 2003, LB 31, § 4.

71-5304. Rules and regulations; construction and operation of system; objectives. (1) The director shall adopt and promulgate necessary minimum rules and regulations governing the siting, design, construction, alteration, classification, and

operation of public water systems to insure that such public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological materials which are determined by the director, pursuant to section 71-5302, to be harmful to the physical health of human beings. In adopting such rules and regulations, the director shall attempt to meet the following objectives:

(a) Insure that facilities are physically separated, to the greatest extent possible, from water or land areas which contain high levels of materials which are harmful to humans;

(b) Insure that such facilities, and all parts thereof, are physically sealed so that leakage of harmful materials into the public water system itself from sources outside the system shall not occur;

(c) Insure that all materials which are used in the construction of a system shall not place harmful materials into the public water system;

(d) Insure that all chemicals or other substances used to treat and purify water are free from harmful materials; and

(e) Insure, to the greatest extent possible, that such rules and regulations will allow uninterrupted and efficient operation of public water systems.

(2) The rules and regulations may contain differences and distinctions based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the objectives of this section are met.

Source: Laws 1976, LB 821, § 4; Laws 2001, LB 667, § 32;
Laws 2003, LB 31, § 5.

71-5304.01. Violations; administrative orders; director; emergency powers; hearing; administrative penalties. (1) Whenever the Director of Regulation and Licensure has reason to believe that a violation of any provision of the Nebraska Safe Drinking Water Act, any rule or regulation adopted and promulgated under such act, or any term of a variance or exemption issued pursuant to section 71-5310 has occurred, he or she may cause an administrative order to be served upon the permittee or permittees alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless the permittee or permittees named in the order request in writing a hearing before the Director of Regulation and Licensure no later than thirty days after the date such order is served. In lieu of such order, the Director of Regulation and Licensure may require that the permittee or permittees appear before the Director of Regulation and Licensure at a time and place specified in the notice and answer the charges. The notice shall be served on the permittee or permittees alleged to be in violation not less than thirty days before the time set for the hearing.

(2) Whenever the Director of Regulation and Licensure finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a material which is determined by the Director of Regulation and Licensure to be harmful or potentially harmful to human health, the Director of Regulation and Licensure may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the Director of Regulation and Licensure deems

necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the Director of Regulation and Licensure, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the Director of Regulation and Licensure shall continue such order in effect, revoke it, or modify it.

(3) The Director of Regulation and Licensure shall afford to the alleged violator an opportunity for a fair hearing before the Department of Health and Human Services Regulation and Licensure under the Administrative Procedure Act.

(4) In addition to any other remedy provided by law, the Director of Regulation and Licensure may issue an order assessing an administrative penalty upon a violator.

(5) The range of administrative penalties assessed under this section for a public water system serving ten thousand or more persons shall be not less than one thousand dollars per day or part thereof for each violation, not to exceed twenty-five thousand dollars in the aggregate. Administrative penalties for a small system shall be not more than five hundred dollars per day or part thereof for each violation, not to exceed five thousand dollars in the aggregate. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm or potential harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, and any other factors which the department may reasonably deem relevant. The administrative penalty assessment shall state specific amounts to be paid for each violation identified in the order.

(6) An administrative penalty shall be paid within sixty days after the date of issuance of the order assessing the penalty. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for the penalty amount plus any statutory interest rate applicable to judgments. An order under this section imposing an administrative penalty may be appealed to the Director of Regulation and Licensure in the manner provided for in subsection (1) of this section. Any administrative penalty paid pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund. An action may be brought in the appropriate court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of the penalty.

Source: Laws 1988, LB 383, § 5; Laws 1996, LB 1044, § 714; Laws 1997, LB 517, § 19; Laws 2001, LB 667, § 33.

71-5304.02. Public water system; notice; requirements. (1) The director may require a public water system to give notice to the persons served by the system and to the Department of Health and Human Services Regulation and Licensure whenever the system:

(a) Is not in compliance with an applicable maximum contaminant level or treatment technique requirement of or a testing procedure prescribed by rules and regulations adopted and promulgated under the Nebraska Safe Drinking Water Act;

(b) Fails to perform monitoring, testing, analyzing, or sampling as required;

(c) Is subject to a variance or exemption; or

(d) Is not in compliance with the requirements prescribed by a variance or exemption.

(2) The director may require a public water system to give notice to the persons served by the public water system of potential sources of contamination as identified by the director under subsection (2) of section 71-5302, of possible health effects of such contamination, and of possible mitigation measures.

(3) The director shall by rule and regulation prescribe the form and manner for giving such notice.

Source: Laws 1988, LB 383, § 6; Laws 1996, LB 1044, § 715; Laws 2001, LB 667, § 34.

71-5305. Public water system; construction, extension, or alteration; written authorization required; exception; procedure. (1) No major construction, extension, or alteration of a public water system shall be commenced without written authorization from the director. No such authorization shall be needed in the case of minor repairs and matters of maintenance. No such authorization shall be granted unless plans and specifications, prepared by a professional engineer, and any additional information required by the department have been submitted to the department or its designated agent for review.

(2) Upon a finding that there has been compliance with the minimum sanitary requirements adopted pursuant to section 71-5304, authorization to proceed with construction shall be granted by the director or his or her designated agent. In issuing authorization for the development of new public water supply sources, consideration shall be given to the location and effects of other water supply systems and the location of points of discharge or disposal for solid and liquid wastes.

Source: Laws 1976, LB 821, § 5; Laws 1997, LB 622, § 109; Laws 2001, LB 667, § 35.

71-5305.01. Certain new water systems; technical, managerial, and financial capacity. All new community water systems and new nontransient noncommunity water systems commencing operation after October 1, 1999, shall demonstrate technical, managerial, and financial capacity to operate under the Nebraska Safe Drinking Water Act.

The Director of Regulation and Licensure may adopt and promulgate rules and regulations to determine demonstration requirements for technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.

Source: Laws 1997, LB 517, § 20.

71-5305.02. Capacity development strategy; department; solicit public comment. The Department of Health and Human Services Regulation and Licensure shall develop a capacity development strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity pursuant to section 71-5305.01. The department shall consider and solicit public comment on:

(1) The methods or criteria the department will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(2) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair capacity development;

(3) A description of how the department will:

(a) Assist public water systems in complying with the Nebraska Safe Drinking Water Act;

(b) Encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(c) Assist public water systems in the training and certification of operators; and

(4) A description of how the department will establish a baseline and measure improvements in capacity with respect to the act.

Source: Laws 1997, LB 517, § 21; Laws 2001, LB 667, § 36.

71-5306. Director; powers and authority; Safe Drinking Water Act Cash Fund; created; use; investment. (1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services Regulation and Licensure Laboratory, or at any other certified laboratory which has entered into an agreement with the Department of Health and Human Services Regulation and Licensure therefor, and establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621;

(c) Certify laboratories performing tests on water that is intended for human consumption. The director may establish, through rules and regulations, standards for certification. Such standards may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results. Such standards shall be consistent with requirements for performing laboratory tests established by the federal Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees for certifying other laboratories shall be established and collected to defray the cost of the inspections;

(d) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(e) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(f) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(g) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the Department of Health and Human Services Regulation and Licensure may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(h) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2) All such fees collected by the Department of Health and Human Services Regulation and Licensure shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130.

71-5307. Operator of public water system; certificate of competency required. No public water system shall be issued or otherwise hold a permit to operate a public water system, granted by the department, unless its operator possesses a certificate of competency issued by the department.

Source: Laws 1976, LB 821, § 7; Laws 2001, LB 667, § 38.

71-5308. Certificate of competency; application; issuance; term; investigation. (1) Application for a certificate of competency to act as a certified operator of a public water system shall be made upon forms prepared by the director and shall contain such information as the director, by rule and regulation, deems necessary. If the applicant is an individual, the application shall include the applicant's social security number. The department shall establish and collect fees for certificates of competency as provided in section 71-162.

(2) Certificates of competency to act as certified operators of public water systems shall be issued by the department for the calendar years applied for and shall expire at midnight on December 31 of the third year. Certificates of competency may be renewed triennially upon application and completion of continuing competency requirements established by the department in rules and regulations. The requirements may include, but not be limited to, one or more of the continuing competency activities listed in section

71-161.09. The department shall notify each certificate holder at least ninety days before the expiration of the certificate by a letter addressed to him or her at his or her last place of residence as noted upon its records.

(3) The department shall, within thirty days after receipt of an application, make an investigation and, if found in compliance with regulations adopted pursuant to section 71-5309, shall issue a certificate of competency, valid until midnight of December 31 of the third year.

Source: Laws 1976, LB 821, § 8; Laws 1997, LB 752, § 190; Laws 2001, LB 667, § 39; Laws 2002, LB 1021, § 90; Laws 2003, LB 242, § 131.

71-5309. Qualifications of operators of public water system; certificate; disciplinary actions; hearing; appeal. (1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system. The director may require, by rule and regulation, that the applicant for a certificate of competency successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

(2) Any such certificate of competency may be denied, suspended, revoked, or refused renewal by the director for due cause. The holder of a certificate of competency may also be placed on probation by the director for due cause. Due cause shall include, but not be limited to, (a) fraud in processing the certificate, (b) habitual intoxication or addiction to the use of drugs, (c) conviction of a felony, (d) physical or mental incapacity to perform professional duties, (e) violation of any of the provisions of the Nebraska Safe Drinking Water Act or any rules or regulations adopted and promulgated under such act, and (f) failure to pay the required fee. If a certificate holder is placed on probation, his or her certificate may be revoked if the probationary requirements are not followed. Except in cases of failure to pay the required fees, no certificate of competency shall be denied, suspended, or revoked except after due notice and opportunity for a hearing. Any denial, suspension, or revocation of such certificate of competency or the placement of a certificate holder on probation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6.

71-5310. Director; authorize variances or exemptions to standards; procedure. (1) The director, with the approval of the council, may authorize variances or

exemptions from the drinking water standards issued pursuant to section 71-5302 under conditions and in such manner as they deem necessary and desirable. Such variances or exemptions shall be permitted under conditions and in a manner which are not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under the federal Safe Drinking Water Act as the act existed on July 20, 2002.

(2) Prior to granting a variance or an exemption, the director shall provide notice, in a newspaper of general circulation serving the area served by the public water system, of the proposed exemption or variance and that interested persons may request a public hearing on the proposed exemption or variance. The director may require the system to provide other appropriate notice as he or she deems necessary to provide adequate notice to persons served by the system.

If a public hearing is requested, the director shall set a time and place for the hearing and such hearing shall be held before the Department of Health and Human Services Regulation and Licensure prior to the variance or exemption being issued. Frivolous and insubstantial requests for a hearing may be denied by the director. An exemption or variance shall be conditioned on monitoring, testing, analyzing, or other requirements to insure the protection of the public health. A variance or an exemption granted shall include a schedule of compliance under which the public water system is required to meet each contaminant level or treatment technique requirement for which a variance or an exemption is granted within a reasonable time as specified by the director with the approval of the council.

Source: Laws 1976, LB 821, § 10; Laws 1988, LB 383, § 8; Laws 1996, LB 1044, § 717; Laws 2001, LB 667, § 41; Laws 2002, LB 1062, § 54.

71-5310.01. Notice, order, or other instrument; service. Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director under the Nebraska Safe Drinking Water Act may be served on any person affected by such notice, order, or other instrument, personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the Department of Health and Human Services Regulation and Licensure, or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail directed to the person affected at his or her last-known post office address as shown by the files or records of the department, and proof of service may be made by the affidavit of the person who did the mailing and filed in the office of the department.

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

Source: Laws 1988, LB 383, § 9; Laws 1996, LB 1044, § 718.

71-5311. Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses. (1) There is hereby established the Advisory Council on Public Water Supply which shall advise and assist the department in administering the Nebraska Safe Drinking Water Act.

(2) The council shall be composed of seven members appointed by the Governor, (a) one of whom shall be a professional engineer, (b) one of whom shall be a licensed physician, (c) two of whom shall be consumers of a public water system, (d) two of whom shall be operators of a public water system who possess a certificate of competency issued by the Department of Health and Human Services Regulation and Licensure to operate a public water system. One such operator shall represent a system serving a population of five thousand or less, and one such operator shall represent a system serving a population of more than five thousand, and (e) one of whom shall be, at the time of appointment, (i) an individual who owns a public water system, (ii) a member of the governing board of a public or private corporation which owns a public water system, or (iii) in the case of a political subdivision which owns a public water system, a member of the subdivision's governing board or board of public works or similar board which oversees the operation of a public water system.

Any owner or operator of a public water system serving on the council on March 2, 1989, shall continue to serve until the term of such member expires. As his or her term expires, such owner or operator shall be replaced by a person qualified as prescribed in subdivisions (d) and (e) of this subsection respectively.

(3) All members shall be appointed for three-year terms. No member shall serve more than three consecutive three-year terms. Each member shall hold office until the expiration of his or her term or until a successor has been appointed. Any vacancy occurring in council membership, other than by expiration of term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

(4) The council shall meet not less than once each year. Special meetings of the council may be called by the director or upon the written request of any two members of the council explaining the reason for such meeting. The place of the meeting shall be set by the director. Such officers as the council deems necessary shall be elected every three years beginning with the first meeting in the year 1990. A majority of the members of the council shall constitute a quorum for the transaction of business. Representatives of the department shall attend each meeting. Every act of the majority of the members of the council shall be deemed to be the act of the council.

(5) No member of the council shall receive any compensation, but each member shall be entitled, while serving on the business of the council, to receive his or her travel and other necessary expenses while so serving away from his or her place of residence as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 821, § 11; Laws 1989, LB 344, § 32;
Laws 1996, LB 1044, § 719; Laws 1997, LB 622, § 110;
Laws 2001, LB 667, § 42.

71-5311.01. Compliance not dependent on funding. The failure or inability of any public water system to receive funds under the Drinking Water State Revolving Fund Act or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with the Nebraska Safe Drinking Water Act and rules and regulations adopted and promulgated under the act.

Source: Laws 1997, LB 517, § 22; Laws 2001, LB 667, § 43.

71-5311.02. Voluntary compliance. The Director of Regulation and Licensure shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the Director of Regulation and Licensure and the department.

Source: Laws 1997, LB 517, § 23.

71-5312. Violations; penalty; county attorney or Attorney General; action to assure compliance. Any person who shall violate any of the provisions of sections 71-5301 to 71-5313 shall be guilty of a Class IV misdemeanor and each day shall constitute a separate offense in cases of continued violation. It shall be the duty of the county attorney or the Attorney General, to whom the director reports a violation, to cause appropriate proceedings to be instituted without delay to assure compliance with sections 71-5301 to 71-5313.

Source: Laws 1976, LB 821, § 12; Laws 1977, LB 41, § 62.

71-5313. Act, how cited. Sections 71-5301 to 71-5313 shall be known and may be cited as the Nebraska Safe Drinking Water Act.

Source: Laws 1976, LB 821, § 13; Laws 1988, LB 383, § 10;
Laws 1997, LB 517, § 24.

DRINKING WATER STATE REVOLVING FUND ACT

71-5314. Act, how cited. Sections 71-5314 to 71-5327 shall be known and may be cited as the Drinking Water State Revolving Fund Act.

Source: Laws 1997, LB 517, § 3.

71-5315. Legislative findings. The Legislature finds that safe drinking water is essential to the protection of public health. The Legislature further finds that the construction, rehabilitation, operation, and maintenance of modern and efficient public water systems and safe drinking water projects are essential to protecting and improving the quality of the state's drinking water, that protecting water quality is an issue of concern to all citizens of the state, and that adequate public water systems and safe drinking water projects are essential to public health and to economic growth and development. Systems need to have adequate technical, managerial, and financial capacities to assure that the public is protected. Needed assistance can be provided to systems through the funds created by the Drinking Water State Revolving Fund Act. The Legislature finds and determines that the funds should be available in perpetuity for providing financial assistance to such systems and for such projects.

The Legislature finds and determines that these funds will consist of both state money and federal grant funds. In addition, the funds can be increased and additional needed safe drinking water projects for owners of public water systems can be undertaken more expeditiously through the issuance of revenue bonds by the Nebraska Investment Finance Authority and the deposit of the proceeds thereof into the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for financing the funds serves a public purpose by assisting public water systems in

providing and improving safe drinking water projects and thereby providing safe drinking water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

Source: Laws 1997, LB 517, § 4; Laws 2001, LB 667, § 44.

71-5316. Terms, defined. For purposes of the Drinking Water State Revolving Fund Act, unless the context otherwise requires:

(1) Safe Drinking Water Act means the federal Safe Drinking Water Act, as the act existed on May 22, 2001;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of a safe drinking water project for a public water system; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of public water systems; or the inspection or supervision of any of such items;

(3) Council means the Environmental Quality Council;

(4) Department means the Department of Environmental Quality;

(5) Director means the Director of Environmental Quality;

(6) Operate and maintain means all necessary activities, including the normal replacement of equipment or appurtenances, to assure the dependable and economical function of a public water system in accordance with its intended purpose;

(7) Owner means any person owning or operating a public water system;

(8) Public water system has the definition found in section 71-5301; and

(9) Safe drinking water project means the structures, equipment, surroundings, and processes required to establish and operate a public water system.

Source: Laws 1997, LB 517, § 5; Laws 2001, LB 667, § 45.

71-5317. Federal grants; director; powers. The director may obligate and administer federal grants for construction of safe drinking water projects pursuant to the Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 6.

71-5318. Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment. (1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water system source water assessment programs, and implementation of a source water petition program under the Safe

Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, in consultation with the Director of Regulation and Licensure, conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for security, investment, and repayment of bonds.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to

the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

Source: Laws 1997, LB 517, § 7; Laws 2001, LB 667, § 46.

71-5319. Repayment of loan or credit; effect. If funds are loaned to or otherwise credited to the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund with an obligation to repay such loan or credit, the obligation to repay the amount of the loan or credit and the interest thereon shall, upon authorization by the council and execution and delivery by the department of an agreement to repay the loan or credit, be a valid and binding obligation of such funds or either fund or portions thereof and payable in accordance with the terms of the agreement executed by the department.

Source: Laws 1997, LB 517, § 8.

71-5320. Pledge; effect. Any pledge of the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund or any part thereof or any pledge of the assets of such funds made by the department as authorized by the council shall be valid and binding from the time the pledge is made. The revenue, money, or assets so pledged and received by such funds shall immediately be subject to a lien of such pledge without any physical delivery thereof or further act, and the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against such funds or the assets thereof, regardless of whether the parties have notice of the lien. Neither the action by the council, the pledge agreement executed by the department, nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1997, LB 517, § 9.

71-5321. Council; powers and duties. The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern eligible systems and application procedures and requirements for making loans under the Drinking Water State Revolving Fund Act;

(2) The power to adopt an intended use plan which shall include the funding priorities established in subsection (6) of section 71-5302. This intended use plan shall be reviewed annually by the council;

(3) The power to adopt a system of establishing interest rates to be charged on loans. The system may allow discounted interest rates for short-term loans or for serious financial hardship. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(4) The power to approve criteria for defining disadvantaged communities;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Drinking Water State Revolving Fund Act; and

(6) Except as limited by section 71-5318, the power to obligate the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets

thereof, in whole or in part, to repay with interest loans to or credits into such funds, including bonds, the proceeds of which are credited to such funds.

Source: Laws 1997, LB 517, § 10.

71-5322. Department; powers and duties. The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 71-5321, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 71-5318 to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 71-5318 all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature;

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

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

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

(c) Accounting for disbursements made by the funds; and

(d) Balancing the funds at the beginning and end of the accounting period;

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

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

(7) The power to develop an intended use plan, in consultation with the Director of Regulation and Licensure, for adoption by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act; and

(9) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Drinking Water State Revolving Fund Act.

Source: Laws 1997, LB 517, § 11; Laws 2001, LB 667, § 47.

71-5323. Loans; eligibility. Loans shall be made only to owners of eligible systems for eligible projects pursuant to the Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 12.

71-5324. Loans; requirements. (1) All loans made under the Drinking Water State Revolving Fund Act shall be made only to owners of public water systems that:

(a) Meet the requirements of financial, technical, and managerial capability set by the department;

(b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

(c) In the case of a privately owned public water system, pledge sufficient revenue, collateral, or other security for the repayment of the loan;

(d) Agree to maintain financial records according to generally accepted government accounting principles and to conduct an audit of the financial records according to generally accepted government auditing standards; and

(e) Provide a written assurance, signed by an attorney holding an active license to practice in the State of Nebraska, that the recipient has proper title, easements, and rights-of-way to the property on or through which the safe drinking water project is to be constructed or extended.

(2) Loans made for the construction of a safe drinking water project shall be made only to owners of public water systems which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Require the contractor of the project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(b) Provide a written notice of completion and start of operation of the safe drinking water project;

(c) Employ a registered professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services; and

(d) Agree to operate and maintain the safe drinking water project so that it will function properly over the structural and material design life.

Source: Laws 1997, LB 517, § 13; Laws 2001, LB 667, § 48.

71-5325. Loan terms. Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years, except for systems serving disadvantaged communities which term may not exceed thirty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Source: Laws 1997, LB 517, § 14.

71-5326. Delinquent payment; how treated. If a municipality, county, or natural resources district fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities, counties, or natural resources district to which the municipality, county, or natural resources district is entitled under sections 77-27,136 to 77-27,137.02. Such amount shall be paid directly to the fund from which the loan was made.

Source: Laws 1997, LB 517, § 15.

71-5327. Reserves authorized. At any time after the first year the fund is effective and prior to federal fiscal year 2002 the state may: (1) Reserve up to thirty-three percent

of a capitalization grant made pursuant to section 1452 of the federal Safe Drinking Water Act and add the funds reserved to any funds provided to the state pursuant to section 601 of the federal Water Pollution Control Act; and (2) reserve in any year a dollar amount up to the dollar amount that may be reserved under subdivision (1) of this section from the capitalization grants made pursuant to section 601 of the federal Water Pollution Control Act and add the reserved funds to any funds provided to the state pursuant to section 1452 of the federal Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 16.

UNIFORM ENVIRONMENTAL COVENANTS ACT

76-2601. Act, how cited. Sections 76-2601 to 76-2613 may be cited as the Uniform Environmental Covenants Act.

Source: Laws 2005, LB 298, § 2

76-2602. Terms, defined. In the Uniform Environmental Covenants Act:

(1) Activity and use limitations means restrictions or obligations created under the act with respect to real property.

(2) Agency means the Department of Environmental Quality or any other Nebraska or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) Common interest community means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) Environmental covenant means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) Environmental response project means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property, including the Petroleum Release Remedial Action Act;

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act.

(6) Holder means the grantee of an environmental covenant as specified in subsection (a) of section 76-2603.

(7) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(8) Record, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or

other medium and is retrievable in perceivable form.(9) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
of the United States.

Source: Laws 2005, LB 298, § 3

76-2603. Nature of rights; subordination of interests. (a) Any person, including a person that owns an interest in the real property, may be a holder, except that the State of Nebraska, a municipality, or another unit of local government may not be a holder unless it is the owner of the real property. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) A right of an agency under the Uniform Environmental Covenants Act or under an environmental covenant, other than a right as a holder, is not an interest in real property.

(c) An agency is only bound by any obligation it expressly assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than the act except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) A prior interest is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) The act does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

Source: Laws 2005, LB 298, § 4.

76-2604. Contents of environmental covenant. (a) An environmental covenant must:

(1) State that the instrument is an environmental covenant executed pursuant to the Uniform Environmental Covenants Act;

(2) Contain a legally sufficient description of the real property subject to the covenant;

(3) Describe the activity and use limitations on the real property;

(4) Identify every holder;

(5) Be signed by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

(6) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) Limitation on amendment or termination of the covenant in addition to those contained in sections 76-2609 and 76-2610;

(6) Rights of the holder in addition to its right to enforce the covenant pursuant to section 76-2611; and

(7) Rights to enforce granted to any person.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require that those persons specified by the agency who have interests in the real property have signed the covenant.

Source: Laws 2005, LB 298, § 5

76-2605. Validity; effect on other instruments. (a) An environmental covenant that complies with the Uniform Environmental Covenants Act runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before September 4, 2005, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. The act does not apply in any other respect to such an instrument.

(d) The act does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

Source: Laws 2005, LB 298, § 6

76-2606. Relationship to other land-use law. The Uniform Environmental Covenants Act does not authorize a use of real property that is otherwise prohibited by zoning, by law other than the act regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than the act.

Source: Laws 2005, LB 298, § 7

76-2607. Notice. (a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

(1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) Any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

Source: Laws 2005, LB 298, § 8

76-2608. Recording. (a) An environmental covenant, any amendment or termination of the covenant under section 76-2609 or 76-2610, and any subordination agreement must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in subsection (c) of section 76-2609, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

(c) A copy of a document recorded under subsection (a) of this section shall also be provided to the Department of Environmental Quality if the department has not signed the covenant.

(d) The department shall make available to the public a listing of all documents under subsection (a) of this section or documents under subsection (c) of this section which have been provided to the department.

Source: Laws 2005, LB 298, § 9

76-2609. Duration; amendment by court action. (a) An environmental covenant is perpetual unless it is:

(1) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent pursuant to section 76-2610;

(3) Terminated pursuant to subsection (b) of this section;

(4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) Terminated or modified in an eminent domain proceeding, but only if:

(A) The agency that signed the covenant is a party to the proceeding;

(B) All persons identified in subsections (a) and (b) of section 76-2610 are given notice of the pendency of the proceeding; and

(C) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in subsections (a) and (b) of section 76-2610 have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to the Administrative Procedure Act.

(c) Except as otherwise provided in subsections (a) and (b) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired by application of sections 57-227 to 57-239, 72-301 to 72-314, or 76-288 to 76-298.

Source: Laws 2005, LB 298, § 10

76-2610. Amendment or termination by consent. (a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The agency;

(2) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) Except as otherwise provided in subdivision (d)(2) of this section, the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties;

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this section; and

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.

Source: Laws 2005, LB 298, § 11

76-2611. Enforcement of environmental covenant. (a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The agency;

(3) Any person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) A municipality or other unit of local government in which the real property subject to the covenant is located.

(b) The Uniform Environmental Covenants Act does not limit the regulatory authority of the agency under law other than the Uniform Environmental Covenants Act with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

(d) The Uniform Environmental Covenants Act does not limit the right of any person to recover damages under any other provision of law.

Source: Laws 2005, LB 298, § 12

76-2612. Uniformity of application and construction. In applying and construing the Uniform Environmental Covenants Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Source: Laws 2005, LB 298, § 13

76-2613. Relation to Electronic Signatures in Global and National Commerce Act. The Uniform Environmental Covenants Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101 of that act, 15 U.S.C. 7001(a), or authorize electronic delivery of any of the notices described in section 103 of that act, 15 U.S.C. 7003(b).

Source: Laws 2005, LB 298, § 14.

DEED NOTATION

76-2119. Civil penalty authorized. The Attorney General may seek a civil penalty of not more than ten thousand dollars for each violation of the Membership Campground Act in the district court of Lancaster County. Each day of continued violation shall constitute a separate offense.

Source: Laws 1990, LB 656, § 19

AIR AND WATER POLLUTION CONTROL TAX REFUND ACT

77-27,149. Terms, defined. As used in sections 77-27,149 to 77-27,155 unless the context otherwise requires:

(1) Facility shall mean any system, equipment or apparatus, or disposal system, including disposal wells, or any treatment works, appliance, equipment, machinery or installation constructed, used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution caused by industrial or agricultural waste, including the generation of electricity; provided, that facilities such as air conditioners, dust collectors, filters, fans, and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions shall not be deemed air pollution control facilities for purposes of this subdivision;

(2) Industrial or agricultural waste shall mean any liquid, gaseous or solid waste substance resulting from any process of industry, manufacture, trade or business, including the generation of electricity, or from the development, processing or recovery of any paper or wood which is capable of polluting the air or waters of this state;

(3) Treatment works shall mean any plant, pumping station, incinerator, air pollution abatement equipment or installation, or other works or reservoir used primarily for the purpose of abating, treating, stabilizing, isolating or holding industrial or agricultural waste; and

(4) Disposal system shall mean any system used primarily for disposing of or isolating industrial or agricultural water and shall include pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting air-borne or water-borne industrial or agricultural waste to a point of disposal, treatment or isolation except that which is necessary to the manufacture of products.

Source: Laws 1972, LB 716, § 1; Laws 1974, LB 820, § 3.

77-27,150. Refund; application; when; contents; hearing; approval. (1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated therein; (b) a descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; (d) the acquisition cost of the facility for which a refund is claimed; and (e) a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151.

(2) The Tax Commissioner shall offer an applicant a hearing upon request of such applicant. The hearing shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act.

(3) A claim for refund received without a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151 shall not be considered a valid claim and shall be returned to the applicant.

(4) Notice of the Tax Commissioner's refusal to issue a refund shall be sent by certified mail to the applicant.

Source: Laws 1972, LB 716, § 2; Laws 1974, LB 820, § 4;
Laws 1977, LB 308, § 1; Laws 1978, LB 244, § 1;
Laws 1993, LB 3, § 43; Laws 2002, LB 989, § 20.

77-27,151. Refund; notice to Tax Commissioner; Department of Environmental Quality; duties. If the Department of Environmental Quality finds that a facility or multiple facilities at a single location are designed and operated primarily for control, capture, abatement, or removal of industrial or agricultural waste from air or water and are suitable, are reasonably adequate, and meet the intent and purposes of the Environmental Protection Act, the Department of Environmental Quality shall so notify the owner of the facility in writing of its findings that the facility, multiple facilities, or the specified portions of any facility are approved. The Department of Environmental Quality shall also notify the Tax Commissioner of its findings and the extent of commercial or productive value derived from any materials captured or recovered by the facility.

Source: Laws 1972, LB 716, § 3; Laws 1974, LB 820, § 5;
Laws 1977, LB 308, § 2; Laws 1993, LB 3, § 44;
Laws 2002, LB 989, § 21.

77-27,152. Refund; notice by certified mail; modify or revoke; when; effect. (1) The Tax Commissioner, after giving notice by certified mail to the applicant and giving an opportunity for a hearing, shall modify or revoke the refund whenever the following appears: (a) The refund was obtained by fraud or misrepresentation regarding the payment of tax on materials incorporated into the facility or facilities; or (b) the Department of Environmental Quality has modified its findings regarding the facility covered by the refund.

(2) The Department of Environmental Quality may modify its findings when it determines any of the following: (a) The refund was obtained by fraud or misrepresentation regarding the facility or planned operation of the facility; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c) the facility covered by the refund is no longer used for the primary purpose of pollution control.

(3) On the mailing by certified mail to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation, all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Source: Laws 1972, LB 716, § 4; Laws 1977, LB 308, § 3;
Laws 1993, LB 3, § 45; Laws 2002, LB 989, § 22.

77-27,153. Appeal; procedure. (1) A party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax refund may appeal from the finding and order of the Tax Commissioner. The finding and order shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act. The appeal shall be in accordance with the Administrative Procedure Act.

(2) The Department of Environmental Quality shall make its findings for the Air and Water Pollution Control Tax Refund Act in accordance with its normal administrative procedures. Nothing in the act is intended to affect the department's authority to make findings and to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Source: Laws 1972, LB 716, § 5; Laws 1988, LB 352, § 160;
Laws 2002, LB 989, § 23.

77-27,154. Rules and regulations. The Tax Commissioner may adopt and promulgate rules and regulations that are necessary for the administration of the Air and Water Pollution Control Tax Refund Act. Such rules and regulations shall not abridge the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the act.

Source: Laws 1972, LB 716, § 6; Laws 1977, LB 308, § 4;
Laws 1993, LB 3, § 46; Laws 2002, LB 989, § 24.

77-27,155. Act, how cited. Sections 77-27,149 to 77-27,155 shall be known as the Air and Water Pollution Control Tax Refund Act.

Source: Laws 1972, LB 716, § 7; Laws 1974, LB 820, § 6.

PUBLIC RECORDS

84-712. Public records; free examination; memorandum and abstracts; copies; fees. (1) Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 84-712.01, are hereby fully empowered and authorized to (a) examine the same, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

(2) Copies made by citizens or other persons using their own copying or photocopying equipment pursuant to subdivision (1)(a) of this section shall be made on the premises of the custodian of the public record or at a location mutually agreed to by the requester and the custodian.

(3)(a) Copies may be obtained pursuant to subdivision (1)(b) of this section only if the custodian has copying equipment reasonably available. Such copies may be obtained in any form designated by the requester in which the public record is maintained

or produced, including, but not limited to, printouts, electronic data, discs, tapes, and photocopies.

(b) Except as otherwise provided by statute, the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual cost of making the copies available shall not exceed the amount of the reasonably calculated actual cost of the photocopies, (ii) for printouts of computerized data on paper, the actual cost of making the copies available shall include the reasonably calculated actual cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual cost of making the copies available shall include the reasonably calculated actual cost of the computer run time, any necessary analysis and programming, and the production of the report in the form furnished to the requester. State agencies which provide electronic access to public records through a gateway service shall obtain approval of their proposed reasonable fees for such records pursuant to sections 84-1205.02 and 84-1205.03, if applicable, and the actual cost of making the copies available may include the approved fee for the gateway service.

(c) This section shall not be construed to require a public body or custodian of a public record to produce or generate any public record in a new or different form or format modified from that of the original public record.

(d) If copies requested in accordance with subdivision (1)(b) of this section are estimated by the custodian of such public records to cost more than fifty dollars, the custodian may require the requester to furnish a deposit prior to fulfilling such request.

(4) Upon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable and without delay, but not more than four business days after actual receipt of the request, either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request.

Source: R.S.1866, c. 44, § 1, p. 297; R.S.1913, § 5595; C.S.1922, § 4902; Laws 1925, c. 146, § 1, p. 381; Laws 1927, c. 193, § 1, p. 551; C.S.1929, § 84-712; R.S.1943, § 84-712; Laws 1961, c. 454, § 3, p. 1383; Laws 1979, LB 86, § 1; Laws 2000, LB 628, § 1.

84-712.01. Public records; right of citizens; full access; fee authorized. (1) Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data

which is a public record in its original form shall remain a public record when maintained in computer files.

(2) When a custodian of a public record of a county provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This subsection shall not be construed to require a governmental entity to acquire computer capability to generate public records in a new or different form when that new form would require additional computer equipment or software not already possessed by the governmental entity.

(3) Sections 84-712 to 84-712.03 shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them.

Source: Laws 1961, c. 454, § 2, p. 1383;
Laws 1979, LB 86, § 2; Laws 1994, LB 1275, § 12;
Laws 2000, LB 628, § 2.

84-712.02. Public records; claimants before United States Department of Veterans Affairs; certified copies free of charge. When it is requested by any claimant before the United States Department of Veterans Affairs or his or her agent or attorney that certified copies of any public record be furnished for the proper and effective presentation of any such claim in such department, the officer in charge of such public records shall furnish or cause to be furnished to such claimant or his or her agent or attorney a certified copy thereof free of charge.

Source: Laws 1961, c. 454, § 4, p. 1384; Laws 1991, LB 2, § 30.

84-712.03. Public records; denial of rights; remedies. Any person denied any rights granted by sections 84-712 to 84-712.03 may elect to:

(1) File for speedy relief by a writ of mandamus in the district court within whose jurisdiction the state, county, or political subdivision officer who has custody of the public record can be served; or

(2) Petition the Attorney General to review the matter to determine whether a record may be withheld from public inspection or whether the public body that is custodian of such record has otherwise failed to comply with such sections. This determination shall be made within fifteen calendar days of the submission of the petition. If the Attorney General determines that the record may not be withheld or that the public body is otherwise not in compliance, the public body shall be ordered to disclose the record immediately or otherwise comply. If the public body continues to withhold the record or remain in noncompliance, the person seeking disclosure or compliance may (a) bring suit in the trial court of general jurisdiction or (b) demand in writing that the Attorney General bring suit in the name of the state in the trial court of general jurisdiction for the same purpose. If such demand is made, the Attorney General shall bring suit within

fifteen calendar days of its receipt. The requester shall have an absolute right to intervene as a full party in the suit at any time.

In any suit filed under this section, the court has jurisdiction to enjoin the public body from withholding records, to order the disclosure, and to grant such other equitable relief as may be proper. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court may view the records in controversy in camera before reaching a decision, and in the discretion of the court other persons, including the requester, counsel, and necessary expert witnesses may be permitted to view the records, subject to necessary protective orders.

Proceedings arising under this section, except as to the cases the court considers of greater importance, shall take precedence on the docket over all other cases and shall be assigned for hearing, trial, or argument at the earliest practicable date and expedited in every way.

Source: Laws 1961, c. 454, § 5, p. 1384; Laws 1977, LB 39, § 316; Laws 1979, LB 86, § 3; Laws 2000, LB 628, § 3.

84-712.04. Public records; denial of rights; public body; provide information. (1) Any person denied any rights granted by sections 84-712 to 84-712.03 shall receive in written form from the public body which denied the request for records at least the following information:

(a) A description of the contents of the records withheld and a statement of the specific reasons for the denial, correlating specific portions of the records to specific reasons for the denial, including citations to the particular statute and subsection thereof expressly providing the exception under section 84-712.01 relied on as authority for the denial;

(b) The name of the public official or employee responsible for the decision to deny the request; and

(c) Notification to the requester of any administrative or judicial right of review under section 84-712.03.

(2) Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

Source: Laws 1979, LB 86, § 4; Laws 1983, LB 3, § 1.

84-712.05. Records which may be withheld from the public; enumerated. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of

elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature.

A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, job application materials means employment applications, resumes, reference letters, and school transcripts, and finalist means any applicant who is offered and who accepts an interview by a public body or its agents, representatives, or consultants for any public employment position; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

Source: Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1;
Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6;
Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2;
Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88;
Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6;
Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7;
Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3;
Laws 2005, LB 361, § 37.

84-712.06. Public record; portion provide; when. Any reasonably segregable public portion of a record shall be provided to the public as a public record upon request after deletion of the portions which may be withheld.

Source: Laws 1979, LB 86, § 6.

84-712.07. Public records; public access; equitable relief; attorney's fees; costs. The provisions of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 pertaining to the rights of citizens to access to public records may be enforced by equitable relief, whether or not any other remedy is also available. In any case in which the complainant seeking access has substantially prevailed, the court may assess

against the public body which had denied access to their records, reasonable attorney fees and other litigation costs reasonably incurred by the complainant.

Source: Laws 1979, LB 86, § 7.

84-712.08. Records; federal government; exception. If it is determined by any federal department or agency or other federal source of funds, services, or essential information, that any provision of sections 84-712, 84-712.01, 84-712.03 to 84-712.09, and 84-1413 would cause the denial of any funds, services, or essential information from the United States Government which would otherwise definitely be available to an agency of this state, such provision shall be suspended as to such agency, but only to the extent necessary to prevent denial of such funds, services, or essential information.

Source: Laws 1979, LB 86, § 8.

84-712.09. Violation; penalty. Any official who shall violate the provisions of sections 84-712, 84-712.01, and 84-712.03 to 84-712.08 shall be subject to removal or impeachment and in addition shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1979, LB 86, § 10.

ADMINISTRATIVE PROCEDURE ACT

84-901. Terms, defined. For purposes of the Administrative Procedure Act:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the act;

(2) Rule or regulation shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure. Rule or regulation shall not include (a) rules and regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public or (b) permits, certificates of public convenience and necessity, franchises, rate orders, and rate tariffs and any rules of interpretation thereof. For purposes of the act, every rule and regulation which prescribes a penalty shall be presumed to have general applicability or to affect private rights and interests;

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing;

(4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:

(a) Communications which do not pertain to the merits of a contested case;

(b) Communications required for the disposition of ex parte matters as authorized by law;

(c) Communications in a ratemaking or rulemaking proceeding; and

(d) Communications to which all parties have given consent; and

(5) Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the act, whether designated as the presiding officer, administrative law judge, or some other title designation.

Source: Laws 1945, c. 255, § 1, p. 795; Laws 1947, c. 350, § 1, p. 1097; Laws 1951, c. 342, § 1, p. 1128; Laws 1959, c. 456, § 1, p. 1510; Laws 1974, LB 819, § 11; Laws 1978, LB 44, § 1; Laws 1981, LB 130, § 1; Laws 1986, LB 992, § 1; Laws 1987, LB 253, § 1; Laws 1994, LB 414, § 135; Laws 1994, LB 446, § 14.

84-902. Agency; rules and regulations; certified copies filed with Secretary of State; manner; open to public inspection. (1) Each agency shall file in the office of the Secretary of State a certified copy of the rules and regulations in force and effect in such agency. The Secretary of State shall keep a permanent file of all such rules and regulations. Such file shall be updated and kept current upon receipt of any rules and regulations adopted, amended, or repealed and filed with the Secretary of State as provided in the Administrative Procedure Act and shall be open to public inspection during regular business hours of his or her office. The Secretary of State, in order to maintain and keep such files current, shall be empowered to require new and amended rules and regulations to be filed as complete file pages and to remove all superseded pages to a separate file.

(2) Rules and regulations filed with the Secretary of State pursuant to the Administrative Procedure Act shall be filed in the manner and form prescribed by the Secretary of State. The Secretary of State shall issue instructions to all state agencies setting forth the format to be followed by all agencies in submitting rules and regulations to the Secretary of State. Such instructions shall provide for a uniform page size, a generally uniform and clear indexing system, and annotations including designation of enabling legislation and court or agency decisions interpreting the particular rule or regulation. For good cause shown, the Secretary of State may grant exceptions to the uniform page size requirement and the general indexing instructions for any agency.

Source: Laws 1945, c. 255, § 2, p. 795; Laws 1947, c. 350, § 2, p. 1098; Laws 1973, LB 134, § 1; Laws 1974, LB 604, § 1; Laws 1976, LB 615, § 1; Laws 1978, LB 44, § 8; Laws 1986, LB 992, § 2; Laws 1987, LB 253, § 2; Laws 2004, LB 915, § 1.

84-903. Agency; rules and regulations; publish. Each agency shall cause its rules and regulations to be published in such manner as the agency shall determine to bring, as far as practicable, the existence and scope of the rules and regulations to the attention of all persons affected thereby.

Source: Laws 1945, c. 255, § 3, p. 795; Laws 1987, LB 253, § 3.

84-905. Agency; rules and regulations; availability required; price. Each agency shall make copies of the rules and regulations in force and effect for such agency available to all interested persons on request, at a price fixed to cover costs of publication and mailing, except that any such agency may furnish the same without charge if funds are available. No rule or regulation shall be effective unless copies thereof are available for distribution by the agency to persons requesting the same.

Source: Laws 1945, c. 255, § 5, p. 795; Laws 1947, c. 350, § 4, p. 1099; Laws 1967, c. 618, § 2, p. 2071; Laws 1969, c. 837, § 2, p. 3161; Laws 1973, LB 134, § 3; Laws 1987, LB 253, § 4.

84-905.01. Rule or regulation; review by Attorney General. A copy of each amendment or rule or regulation to be adopted under the Administrative Procedure Act, prior to the date of filing with the Secretary of State, shall be submitted to the Attorney General for his or her consideration as to the statutory authority and constitutionality of such amendment or rule or regulation and his or her approval or disapproval thereof, including a determination as to whether or not the rule or regulation submitted is substantially different from the published proposed rule or regulation. If the amendment or rule or regulation to be filed is approved as to legality by the Attorney General, he or she shall so indicate with his or her stamp of approval which shall be dated and signed.

Source: Laws 1947, c. 350, § 5, p. 1099; Laws 1969, c. 837, § 3, p. 3161; Laws 1974, LB 604, § 3; Laws 1986, LB 992, § 3; Laws 1987, LB 253, § 5; Laws 1994, LB 446, § 17.

84-906. Rule or regulation; when valid; presumption; limitation of action. (1) No rule or regulation of any agency shall be valid as against any person until five days after such rule or regulation has been filed with the Secretary of State. No rule or regulation required under the Administrative Procedure Act to be filed with the Secretary of State shall remain valid as against any person until the certified copy of the rule or regulation has been so filed on the date designated and in the form prescribed by the Secretary of State. The filing of any rule or regulation shall give rise to a rebuttable presumption that it was duly and legally adopted.

(2) A rule or regulation adopted after August 1, 1994, shall be invalid unless adopted in substantial compliance with the provisions of the act, except that inadvertent failure to mail a notice of the proposed rule or regulation to any person shall not invalidate a rule or regulation.

(3) Any action to contest the validity of a rule or regulation on the grounds of its noncompliance with any provision of the act shall be commenced within four years after the effective date of the rule or regulation.

(4) The changes made to the act by Laws 1994, LB 446, shall not affect the validity or effectiveness of a rule or regulation adopted prior to August 1, 1994, or noticed for hearing prior to such date.

(5) The changes made to the act by Laws 2005, LB 373, shall not affect the

validity or effectiveness of a rule or regulation adopted prior to October 1, 2005, or noticed for hearing prior to such date.

Source: Laws 1945, c. 255, § 6, p. 796; Laws 1947, c. 350, § 6, p. 1100; Laws 1973, LB 134, § 4; Laws 1986, LB 992, § 4; Laws 1987, LB 253, § 6; Laws 1994, LB 446, § 18; Laws 2005, LB 373, § 2.

84-906.01. Official rulemaking or regulationmaking record; agency maintain; contents. (1) An agency shall maintain an official rulemaking or regulationmaking record for each rule or regulation it adopts or proposes by publication of a notice. The record and materials incorporated by reference shall be available for public inspection and shall be maintained for at least four years after the effective date of the rule or regulation.

(2) The record shall contain:

(a) Copies of all publications with respect to the rule or regulation;

(b) Copies of any portions of the public rulemaking or regulationmaking docket containing entries relating to the rule or regulation;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written materials prepared by or for the agency in connection with the proposal or adoption of the rule or regulation;

(d) Any official transcript of oral presentations made in a proceeding about the proposed rule or regulation or, if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by the hearing officer summarizing the contents of those presentations;

(e) A copy of the rule or regulation and the concise explanatory statement filed with the Secretary of State;

(f) All petitions for adoption of, exceptions to, amendments of, or repeal or suspension of, the rule or regulation;

(g) A copy of any comments on the rule or regulation filed by a legislative committee; and

(h) A description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons.

(3) Upon judicial review, the record required by this section shall constitute the official agency rulemaking or regulationmaking record with respect to a rule or regulation. Except as provided in section 84-907.04 or as otherwise required by law, the agency rulemaking or regulationmaking record need not constitute the exclusive basis for agency action on that rule or regulation or for judicial review thereof.

Source: Laws 1994, LB 446, § 19; Laws 2005, LB 373, § 3.

84-906.02. Public comments; notice; agency; powers. In addition to seeking information by other methods and before publication of a notice under section 84-907, an agency is encouraged to and may solicit comments from the public on a subject matter of possible rule or regulation making by causing notice to be published in a newspaper of general circulation of the subject matter and indicating where, when, and how persons may comment.

Source: Laws 1994, LB 446, § 20.

84-906.03. Secretary of State; duties. It shall be the duty of the Secretary of State:

(1) To establish and cause to be compiled, indexed by subject, and published a codification system for all rules and regulations filed to be designated the Nebraska Administrative Code.

(2) To cause the Nebraska Administrative Code to be computerized to facilitate agencies in revision of their rules and regulations and provide research capabilities; and

(3) To distribute a current copy of existing rules and regulations as accepted by him or her as filed to the State Library and to each county law library of the State of Nebraska making a request for a copy of such rules and regulations; to distribute, on a regular basis, copies of all modifications or amendments to agency rules and regulations as accepted by him or her as filed to the State Library and to each county law library of the State of Nebraska which requests copies of all modifications or amendments; to distribute at least four current copies of any rules and regulations accepted by him or her as filed to the Nebraska Publications Clearinghouse to meet the needs of the Nebraska publications depository system; to distribute on a regular basis at least four copies of all modifications or amendments to agency rules and regulations accepted by him or her as filed to the Nebraska Publications Clearinghouse to meet the needs of the Nebraska publications depository system; to distribute a current copy of any existing rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing; and to distribute, on a regular basis, copies of any or all modifications or amendments to agency rules and regulations as accepted by him or her as filed to all interested persons on request at a price fixed to cover costs of printing, handling, and mailing.

Source: Laws 1973, LB 134, § 6; Laws 1975, LB 267, § 1;
Laws 1980, LB 712, § 1; Laws 1981, LB 130, § 2;
Laws 1982, LB 784, § 1; Laws 1986, LB 992, § 5.

84-906.04. Secretary of State; maintain docket for pending proceedings; contents. (1) The Secretary of State shall maintain a current public rulemaking or regulationmaking docket for each pending rulemaking or regulationmaking proceeding. A rulemaking or regulationmaking proceeding is pending from the time it is commenced by publication of a notice of proposed rule or regulation making to the time it is terminated by publication of a notice of termination or the rule or regulation becoming effective.

(2) For each rulemaking or regulationmaking proceeding, the docket shall indicate:

(a) The subject matter of the proposed rule or regulation;

(b) A citation to all published notices relating to the proceeding;

(c) The name and address of agency personnel with whom people may communicate regarding the proposed rule or regulation;

(d) Where written comments on the proposed rule or regulation may be inspected;

(e) The time during which written comments may be made;

(f) The names of persons who have submitted written comments on the proposed rule or regulation;

(g) Where the description of the fiscal impact may be inspected and obtained;

(h) The current status of the proposed rule or regulation and any agency determinations with respect thereto;

(i) Any known timetable for agency decisions or other action in the proceeding;

(j) The date of the rule's or regulation's adoption;

(k) The date of the rule's or regulation's filing, indexing, and publication; and

(l) The operative date of the rule or regulation if such date is later than the effective date prescribed in sections 84-906 and 84-911.

Source: Laws 1994, LB 446, § 16.

84-906.05. Rule or regulation; judicial notice. (1) Every court of this state may take judicial notice of any rule or regulation that is signed by the Governor and filed with the Secretary of State pursuant to section 84-906.

(2) The court may inform itself of such rules and regulations in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information.

Source: Laws 1974, LB 604, § 5; Laws 1986, LB 992, § 6; Laws 1987, LB 253, § 7; Laws 1999, LB 320, § 1.

84-907. Rule or regulation; adoption; amendment; repeal; hearing; notice; procedure. No rule or regulation shall be adopted, amended, or repealed by any agency except after public hearing on the question of adopting, amending, or repealing such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto to the Secretary of State and by publication in a newspaper having general circulation in the state. All such hearings shall be open to the public. In addition to the requirements of section 84-906.01, draft copies or working copies of all rules and regulations to be adopted, amended, or repealed by any agency shall be available to the public in the office of the Secretary of State at the time of giving notice. The notice shall include: (1) A declaration of availability of such draft or work copies for public examination; (2) a short explanation of the purpose of the proposed rule or regulation or the reason for the amendment or repeal of the rule or regulation; and (3) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and persons being regulated or an explanation of where the description of the fiscal impact may be inspected and obtained. No person may challenge the validity of any rule or regulation, the adoption, amendment, or repeal of any rule or regulation, or any determination of the applicability of any rule or regulation on the basis of the explanation or description provided pursuant to subdivisions (2) and (3) of this section. Any agency adopting, amending, or repealing a rule or regulation may make written application to the Governor who may, upon receipt of a written showing of good cause, waive the notice of public hearing.

For purposes of this section, good cause shall include, but not be limited to, a showing by the agency that:

(a) Compliance with the public notice requirements of this section would result in extreme hardship on the citizens of this state;

(b) An emergency exists which must be remedied immediately; or

(c) A timely filing or publication of notice of a public hearing was prevented by some unforeseeable event beyond the immediate control of the agency and that the parties affected have not and will not suffer material injury as a result of the agency's action.

Whenever public notice is waived, the agency shall, so far as practicable, give notice to the public of the proposed rule or regulation change and of the rule or regulation as finally adopted or changed.

Source: Laws 1953, c. 359, § 1, p. 1138; Laws 1977, LB 462, § 1; Laws 1978, LB 585, § 1; Laws 1980, LB 846, § 1; Laws 1986, LB 992, § 7; Laws 1987, LB 253, § 8; Laws 1987, LB 487, § 1; Laws 1994, LB 446, § 21; Laws 2005, LB 373, § 4.

84-907.01. Rule or regulation; public hearing; notice to subscribers. The Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting, amending, or repealing any rule or regulation of any agency and shall provide such notice to such subscribers at cost to be assessed against each subscriber.

Source: Laws 1977, LB 462, § 2; Laws 1986, LB 992, § 8; Laws 1987, LB 253, § 9.

84-907.02. Secretary of State; collection and disbursement of funds. The Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out section 84-907.01.

Source: Laws 1977, LB 462, § 3; Laws 1986, LB 992, § 9.

84-907.03. Secretary of State Administration Cash Fund; created; use; investment. There is hereby created the Secretary of State Administration Cash Fund. The fund shall consist of revenue received to defray costs as authorized in sections 84-901 to 84-908. The revenue shall be collected by the Secretary of State and remitted to the State Treasurer for credit to the fund. The fund shall be used to (1) offset expenses incurred as a result of such sections and (2) administer the Address Confidentiality Act.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 1194, § 8; Laws 1995, LB 7, § 148; Laws 2003, LB 228, § 15.

84-907.04. Proposed rule or regulation; explanatory statement; contents; use. (1) At the time an agency finalizes a proposed rule or regulation and prior to submission to the Secretary of State, Attorney General, and Governor, the agency shall attach to the proposed rule or regulation a concise explanatory statement containing:

(a) Its reasons for adopting the rule or regulation;

(b) An indication of any change between the text of the proposed rule or regulation contained or referenced in the published notice and the text of the rule or regulation to be adopted, with the reasons for any change; and

(c) When procedural rules differ from the model rules, the agency's reasons why relevant portions of the model rules were impracticable under the circumstances.

(2) Only the reasons contained in the concise explanatory statement may be used

by an agency as justifications for the adoption of the rule or regulation in any proceeding in which its validity is at issue.

Source: Laws 1994, LB 446, § 22.

84-907.05. Proposed rule or regulation; substantially different from published notice; considerations; limitation on agency. (1) An agency may not adopt a rule or regulation that is substantially different from the proposed rule or regulation contained or referenced in the published notice. An agency may terminate a rulemaking or regulationmaking proceeding and commence a new rulemaking or regulationmaking proceeding for the purpose of adopting a substantially different rule or regulation.

(2) In determining whether a rule or regulation is substantially different from the proposed rule or regulation contained or referenced in the published notice, the following shall be considered:

(a) The extent to which all persons affected by the adopted rule or regulation should have had adequate notice from the published notice and the proposed rule or regulation contained or referenced in the published notice that their interests would be affected;

(b) The extent to which the subject matter of the adopted rule or regulation or the issues determined by the rule or regulation are different from the subject matter or issues involved in the proposed rule or regulation contained or referenced in the published notice; and

(c) The extent to which the effects of the adopted rule or regulation differ from the effects of the proposed rule or regulation contained or referenced in the published notice had it been adopted instead.

Source: Laws 1994, LB 446, § 23.

84-907.06. Adoption, amendment, or repeal of rule or regulation; notice to Executive Board of the Legislative Council. Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency applies to the Governor for a waiver of the notice of public hearing, the agency shall send to the Executive Board of the Legislative Council (a) a copy of the hearing notice required by section 84-907, (b) if applicable, a draft copy of the rule or regulation, and (c) the information provided to the Governor pursuant to section 84-907.09.

Source: Laws 1994, LB 446, § 24; Laws 2005, LB 373, § 5.

84-907.07. Executive Board of the Legislative Council; standing committees of the Legislature; powers and duties. The chairperson of the Executive Board of the Legislative Council or committee staff member of the board shall refer materials received pursuant to section 84-907.06 for review (1) to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and (2) if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving. The committee or

committee chairperson of such standing committee of the Legislature having subject matter jurisdiction may submit a written or oral statement at the public hearing on the rule or regulation or, if the Governor authorizes a waiver of the notice of public hearing, may submit a written statement to the agency and to the Secretary of State to be entered in the records relating to the rule or regulation.

Source: Laws 1994, LB 446, § 25; Laws 2005, LB 373, § 6.

84-907.08. Petition to adopt a rule or regulation; form; procedure. Any person may petition an agency requesting the adoption of a rule or regulation. Each agency shall prescribe by rule or regulation the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (1) deny the petition in writing, stating its reasons therefor, (2) initiate rulemaking or regulationmaking proceedings in accordance with the Administrative Procedure Act, or (3) if otherwise lawful, adopt a rule or regulation.

Source: Laws 1994, LB 446, § 26.

84-907.09. Adoption, amendment, or repeal of rule or regulation; provide information to Governor. Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency applies to the Governor for a waiver of the notice of public hearing under section 84-907, the agency shall provide to the Governor for review (a) a description of the proposed rule or regulation and the entity or entities it will impact, (b) an explanation of the necessity of the proposed rule or regulation, including the identification of the authorizing statute or legislative bill, (c) a statement that the proposed rule or regulation is consistent with legislative intent, (d) a statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded, (e) a statement indicating if the proposed rule or regulation is the result of a federal mandate on state government or on a local governmental subdivision and if the mandate is funded, (f) a description, including an estimated quantification, of the fiscal impact on state agencies, political subdivisions, and regulated persons, (g) a statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing, and (h) a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation.

Source: Laws 2005, LB 373, § 1.

84-907.10. Member of the Legislature; complaint; procedure. (1) After an agency submits a copy of each amendment or rule or regulation pursuant to section 84-907.06, or any time thereafter, any member of the Legislature who feels aggrieved by the amendment, rule, or regulation or believes that the amendment, rule, or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, or is inconsistent with the legislative intent of the authorizing statute may file a complaint with the Chairperson of the Executive Board of the Legislative Council. The complaint shall explain in detail the member's contentions.

(2) The chairperson of the executive board or a committee staff member of the executive board shall refer the complaint to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and, if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving.

(3) The standing committee and primary sponsor of the legislative bill or amendment granting rulemaking authority may consider the complaint and, if such committee or primary sponsor concludes that the complaint has merit, then such committee or primary sponsor may request a written response from the agency which shall include, but not be limited to (a) a description of the amendment or rule or regulation, (b) when applicable, a description of the legislative intent of the statute granting the agency rulemaking authority and a statement explaining how the amendment or rule or regulation is consistent with legislative intent, (c) if the description required in subdivision (b) of this subsection is inapplicable, an explanation as to why the amendment or rule or regulation is necessary, and (d) an explanation of the extent to which and how any public comment was taken into consideration by the agency with respect to the amendment or rule or regulation. The agency shall respond within sixty days of a request, and such response shall be a public record.

(4) Nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or regulation in accordance with other sections of the Administrative Procedure Act.

Source: Laws 2005, LB 373, § 7

84-908. Rule or regulation; adoption; amendment; repeal; considerations; when effective. No adoption, amendment, or repeal of any rule or regulation shall become effective until the same has been approved by the Governor and filed with the Secretary of State after a hearing has been set on such rule or regulation pursuant to section 84-907. When determining whether to approve the adoption, amendment, or repeal of any rule or regulation relating to an issue of unique interest to a specific geographic area, the Governor's considerations shall include, but not be limited to: (1) Whether adequate notice of hearing was provided in the geographic area affected by the rule or regulation. Adequate notice shall include, but not be limited to, the availability of copies of the rule or regulation at the time notice was given pursuant to section 84-907; and (2) whether reasonable and convenient opportunity for public comment was provided for the geographic area affected by the rule or regulation. If a public hearing was not held in the affected geographic area, reasons shall be provided by the agency to the Governor. Any rule or regulation properly adopted by any agency shall be filed with the Secretary of State.

Source: Laws 1953, c. 359, § 2, p. 1138; Laws 1972, LB 373, § 1; Laws 1974, LB 604, § 4; Laws 1975, LB 316, § 1; Laws 1978, LB 44, § 10; Laws 1986, LB 992, § 10; Laws 1987, LB 253, § 10; Laws 1987, LB 189, § 1.

84-909. Agency; rules and regulations governing procedure; adoption. In addition to other requirements imposed by law:

(1) Each agency shall adopt rules and regulations governing the formal and informal procedures prescribed or authorized by the Administrative Procedure Act. Such rules and regulations shall include rules of practice before the agency together with forms and instructions; and

(2) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules and regulations with descriptive statements of its procedures.

Source: Laws 1959, c. 456, § 2, p. 1511; Laws 1980, LB 846, § 2; Laws 1987, LB 253, § 11; Laws 1994, LB 446, § 33.

84-909.01. Model rules of procedure; Attorney General; agency; duties. In accordance with the rulemaking and regulationmaking requirements of the Administrative Procedure Act, the Attorney General shall prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible and shall file the model rules with the Secretary of State. The model rules shall deal with all general functions and duties performed in common by several agencies. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under its circumstances. To the extent an agency adopts the model rules, it shall do so in accordance with the rulemaking and regulationmaking requirements of the act. Any agency adopting a rule of procedure that differs from the model rules shall include in the explanatory statement provided for in section 84-907.04 a finding stating the reasons why the relevant portions of the model rules were impracticable under the circumstances.

Source: Laws 1994, LB 446, § 15.

84-911. Validity of rule or regulation; declaratory judgment; procedure. (1) The validity of any rule or regulation may be determined upon a petition for a declaratory judgment thereon addressed to the district court of Lancaster County if it appears that the rule or regulation or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule or regulation in question.

(2) The court shall declare the rule or regulation invalid if it finds that it violates constitutional provisions, exceeds the statutory authority of the agency, or was adopted without compliance with the statutory procedures. For purposes of this subsection, statutory procedures shall not include procedures provided under the Negotiated Rulemaking Act.

Source: Laws 1959, c. 456, § 4, p. 1511; Laws 1987, LB 253, § 13; Laws 1994, LB 446, § 34.

84-912.01. Petition for declaratory order; issuance by agency; duties; effect. (1) Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order within the primary

jurisdiction of the agency. An agency shall issue a declaratory order in response to a petition for that order unless the agency determines that issuance of the order under the circumstances would be contrary to a rule or regulation adopted in accordance with subsection (2) of this section. An agency may not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

(2) Each agency shall issue rules or regulations that provide for: (a) The form, contents, and filing of petitions for declaratory orders; (b) the procedural rights of persons in relation to the petitions; (c) the disposition of the petitions; and (d) notice to necessary parties for matters set for hearing or specified proceedings. The rules or regulations shall describe the classes of circumstances in which the agency will not issue a declaratory order and be consistent with the public interest and with the general policy of the Administrative Procedure Act to facilitate and encourage agency issuance of reliable advice.

(3) Persons who qualify for intervention and file timely petitions for intervention according to agency rules and regulations may intervene in proceedings for declaratory orders.

(4) Within thirty days after receipt of a petition for a declaratory order, an agency shall, in writing:

(a) Issue an order or agree to issue a declaratory order by a specified time declaring the applicability of the statute, rule, regulation, or order in question to the specified circumstances;

(b) Set the matter for specified proceedings; or

(c) Decline to issue a declaratory order, stating the reasons for its action.

(5) A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the petitioner and any other parties.

(6) A declaratory order shall have the same status and binding effect as any other order issued in a contested case. A declaratory order shall contain the names of all parties to the proceeding on which it is based, the particular facts on which it is based, and the reasons for its conclusion.

(7) If an agency has not issued a declaratory order within sixty days after receipt of a petition therefor, the petition shall be deemed to have been denied.

Source: Laws 1994, LB 446, § 27.

84-912.02. Petition for intervention; hearing officer or designee; grant petition; conditions; powers and duties; order. (1) A hearing officer or designee shall grant a petition for intervention if:

(a) The petition is submitted in writing to the hearing officer or designee, with copies mailed to all parties named in the hearing officer's notice of the hearing, at least five days before the hearing;

(b) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(c) The hearing officer or designee determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

(2) The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(3) If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The hearing officer or designee, at least twenty-four hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order. The hearing officer or designee may modify the order at any time, stating the reasons for the modification. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

Source: Laws 1994, LB 446, § 28.

84-912.03. Tax Equalization and Review Commission; exemption. Sections 84-912.01 and 84-913 to 84-919 do not apply to the Tax Equalization and Review Commission.

Source: Laws 1995, LB 490, § 190; Laws 2004, LB 973, § 68.

84-913. Contested cases; notice of hearing; record; transcript. In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable. Opportunity shall be afforded all parties to present evidence and argument with respect thereto. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe shorthand notes unless requested for purpose of rehearing, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation. Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default. Each agency shall adopt appropriate rules and regulations for notice and hearing in contested cases.

Source: Laws 1959, c. 456, § 6, p. 1512;
Laws 1969, c. 838, § 1, p. 3162; Laws 1987, LB 253, § 15.

84-913.01. Hearing officer; prehearing conference; procedure. (1) The hearing officer designated to conduct the hearing may determine, subject to the agency's rules

and regulations, whether a prehearing conference will be conducted. If the conference is conducted:

(a) The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The agency may assign another hearing officer for the prehearing conference; and

(b) The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

(2) The notice shall include:

(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

(d) A statement of the time, place, and nature of the prehearing conference;

(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference; and

(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act.

The notice may include any other matters that the hearing officer considers desirable to expedite the proceedings.

Source: Laws 1994, LB 446, § 29.

84-913.02. Hearing officer; prehearing conference; powers and duties; orders. (1) The hearing officer shall conduct the prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(2) If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

Source: Laws 1994, LB 446, § 30.

84-913.03. Hearing officer; prehearing conference and hearing; how conducted. The hearing officer may conduct all or part of the prehearing conference and the hearing by telephone, television, or other electronic means if each participant in the conference or hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place. This section does not apply to a prehearing conference or a hearing held under sections 60-498.01 to 60-498.04.

Source: Laws 1994, LB 446, § 31; Laws 2003, LB 209, § 20.

84-913.04. Proceedings; limitation on participation. (1) A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(2) A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection (3) of this section.

(3) If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as, investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

(4) A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

(5) A person may serve as hearing officer at successive stages of the same contested case.

Source: Laws 1994, LB 446, § 32.

84-914. Contested cases; evidence; procedure; ex parte communications. In contested cases:

(1) An agency may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. An agency shall give effect to the rules of privilege recognized by law. Any party to a formal hearing before an agency, from which a decision may be appealed to the courts of this state, may request that the agency be bound by the rules of evidence applicable in district court by delivering to the agency at least three days prior to the holding of the hearing a written request therefor. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered;

(2) The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may administer oaths and issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court;

(3) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) An agency may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of material so noticed. Parties shall be afforded an opportunity to contest facts so noticed. The record shall contain a written record of everything officially noticed. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it; and

(6)(a) No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(b) No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

(c) No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

(d) The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subdivisions (6)(a) through (c) of this section shall file in the record of the contested case (i) all such written communications, (ii) memoranda stating the substance of all such oral communications, and (iii) all written responses and memoranda stating the substance of all oral responses to all the ex parte communications. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

(e) The prohibitions of subdivision (6) of this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.

(f) The prohibitions contained in subdivisions (6)(a) and (b) of this section shall not apply to ex parte communications to or from an elected official. However, the disclosure

requirements contained in subdivision (6)(d) of this section shall apply to ex parte communications to or from an elected official.

Source: Laws 1959, c. 456, § 7, p. 1513; Laws 1967, c. 618, § 3, p. 2072; Laws 1987, LB 253, § 16; Laws 1994, LB 414, § 136; Laws 1994, LB 446, § 35.

84-915. Contested cases; orders; findings of fact; conclusions of law; notification. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

Source: Laws 1959, c. 456, § 8, p. 1513; Laws 1987, LB 253, § 17.

84-915.01. Official record of contested cases; agency maintain; contents; use. (1) An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

(2) The agency record shall consist only of:

(a) Notices of all proceedings;

(b) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;

(c) The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and

(d) The final order.

(3) Except as otherwise provided by law, the physical custody of the agency record shall be maintained by the agency. The agency shall permit the partles to inspect the agency record and obtain copies of the agency record.

(4) Except as otherwise provided by law, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

Source: Laws 1994, LB 446, § 36; Laws 2006, LB 1115, § 41.

84-916. Act; intent. The Administrative Procedure Act is intended to constitute an independent act establishing minimum administrative procedure for all agencies.

Source: Laws 1959, c. 456, § 10, p. 1514; Laws 1987, LB 253, § 18.

84-917. Contested case; appeal; procedure. (1) Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, shall be entitled to judicial review under the Administrative Procedure Act. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition in the district court of the county where the action is taken within thirty days after the service of the final decision by the agency. All parties of record shall be made parties to the proceedings for review. If an agency's only role in a contested case is to act as a neutral factfinding body, the agency shall not be a party of record. In all other cases, the agency shall be a party of record. Summons shall be served within thirty days of the filing of the petition in the manner provided for service of a summons in section 25-510.02. If the agency whose decision is appealed from is not a party of record, the petitioner shall serve a copy of the petition and a request for preparation of the official record upon the agency within thirty days of the filing of the petition. The court, in its discretion, may permit other interested persons to intervene.

(b) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the agency whose action is at issue; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) identification of the parties in the contested case that led to the final decision; (v) facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon such agency shall not stay enforcement of a decision. The agency may order a stay. The court may order a stay after notice of the application therefor to such agency and to all parties of record. If the agency has found that its action on an application for stay or other temporary remedies is justified to protect against a substantial threat to the public health, safety, or welfare, the court may not grant relief unless the court finds that: (a) The applicant is likely to prevail when the court finally disposes of the matter; (b) without relief, the applicant will suffer irreparable injuries; (c) the grant of relief to the applicant will not substantially harm other parties to the proceedings; and (d) the threat to the public health, safety, or welfare relied on by the agency is not sufficiently serious to justify the agency's action in the circumstances. The court may require the party requesting such stay to give bond in such amount and conditioned as the court may direct.

(4) Within thirty days after service of the petition or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the proceedings had before the agency. Such official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case; (c) the transcribed record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The agency shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. The agency may require payment or bond prior to the transmittal of the record.

(5)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the review shall be conducted by the court without a jury on the record of the agency, and review may not be obtained of any issue that was not raised

before the agency unless such issue involves one of the grounds for reversal or modification enumerated in subdivision (6)(a) of this section. When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the review shall be conducted by the court without a jury de novo on the record of the agency.

(b)(i) If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the agency, the court may remand the case to the agency for further proceedings.

(ii) The agency shall affirm, modify, or reverse its findings and decision in the case by reason of the additional proceedings and shall file the decision following remand with the reviewing court. The agency shall serve a copy of the decision following remand upon all parties to the district court proceedings. The agency decision following remand shall become final unless a petition for further review is filed with the reviewing court within thirty days after the decision following remand being filed with the district court. The party filing the petition for further review shall serve a copy of the petition for further review upon all parties to the district court proceeding in accordance with section 25-534 within thirty days after the petition for further review is filed. Within thirty days after service of the petition for further review or within such further time as the court for good cause shown may allow, the agency shall prepare and transmit to the court a certified copy of the official record of the additional proceedings had before the agency following remand.

(6)(a) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the agency decision is:

(i) In violation of constitutional provisions;

(ii) In excess of the statutory authority or jurisdiction of the agency;

(iii) Made upon unlawful procedure;

(iv) Affected by other error of law;

(v) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(vi) Arbitrary or capricious.

(b) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the court may affirm, reverse, or modify the decision of the agency or remand the case for further proceedings.

(7) The review provided by this section shall not be available in any case where other provisions of law prescribe the method of appeal.

Source: Laws 1963, c. 531, §1, p. 1664; Laws 1969, c. 838, § 2, p. 3162; Laws 1983, LB 447, §102; Laws 1987, LB 253, §19; Laws 1988, LB 352, §186; Laws 1989, LB 213, § 1; Laws 1997, LB 165, § 5; Laws 2006, LB 1115, § 42.

84-918. District court decision; appeal. (1) An aggrieved party may secure a review of any judgment rendered or final order made by the district court under the Administrative Procedure Act by appeal to the Court of Appeals.

(2) When the petition instituting proceedings for review was filed in the district court before July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

(3) When the petition instituting proceedings for review is filed in the district court on or after July 1, 1989, the appeal shall be taken in the manner provided by law for appeals in civil cases. The judgment rendered or final order made by the district court may be reversed, vacated, or modified for errors appearing on the record.

Source: Laws 1963, c. 531, § 2, p. 1665; Laws 1987, LB 253, § 20; Laws 1989, LB 213, § 2; Laws 1991, LB 732, § 158.

84-919. Act; exclusive means of judicial review. Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

Source: Laws 1963, c. 531, § 3, p. 1666; Laws 1987, LB 253, § 21; Laws 1988, LB 352, § 187.

84-919.01. Negotiated Rulemaking Act; use by agency. Prior to the formal rulemaking procedure of section 84-907, agencies may use the procedures of the Negotiated Rulemaking Act to permit the direct participation of affected persons in the development of proposed rules and regulations. Negotiated rulemaking may be used to resolve controversial issues prior to the formal rulemaking of the Administrative Procedure Act. To be effective, such proposed rules and regulations shall be adopted pursuant to the Administrative Procedure Act in the form proposed by the negotiated rulemaking committee or as amended by the agency.

Source: Laws 1994, LB 446, § 37.

84-920. Act, how cited. Sections 84-901 to 84-920 shall be known and may be cited as the Administrative Procedure Act.

Source: Laws 1987, LB 253, § 22; Laws 1994, LB 446, § 38; Laws 1995, LB 490, § 191; Laws 2005, LB 373, § 8.

NEGOTIATED RULEMAKING ACT

84-921. Act, how cited. Sections 84-921 to 84-932 shall be known and may be cited as the Negotiated Rulemaking Act.

Source: Laws 1994, LB 446, § 1.

84-922. Purpose of act. The purpose of the Negotiated Rulemaking Act is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act. It is the intent of the Legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process of the Administrative Procedure Act. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent formal rulemaking process. This section shall not

be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

Source: Laws 1994, LB 446, § 2.

84-923. Terms, defined. For purposes of the Negotiated Rulemaking Act:

(1) Agency shall have the same meaning as in section 84-901;

(2) Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition;

(3) Convenor shall mean a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure;

(4) Facilitator shall mean a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decisionmaking authority;

(5) Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner;

(6) Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee;

(7) Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;

(8) Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character; and

(9) Rule shall mean rule or regulation as defined in section 84-901.

Source: Laws 1994, LB 446, § 3.

84-924. Negotiated rulemaking committee; establishment; agency director; use of negotiated rulemaking procedure; determination; considerations; convenor; duties. (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

(a) There is a need for a rule;

(b) There are a limited number of identifiable interests that will be significantly affected by the rule;

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(i) Can adequately represent the interests identified; and

(ii) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the Administrative Procedure Act;

(f) The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency in the formal rulemaking process of the Administrative Procedure Act.

(2) An agency may use the services of a convenor to assist in making the determination of need pursuant to subsection (1) of this section and to assist the agency in:

(a) Identifying persons who will be significantly affected by a proposed rule; and

(b) Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

(3) The convenor shall report findings and make recommendations to the agency. Upon request of the agency, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convenor shall be made available to the public upon request.

Source: Laws 1994, LB 446, § 4.

84-925. Petition to use negotiated rulemaking committee; procedure; exception. (1) Except as provided in subsection (2) of this section, any person may petition an agency to request the use of a negotiated rulemaking committee in the development or revision of a rule. Each agency shall prescribe the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (a) deny the petition in writing stating its reasons therefor or (b) initiate the negotiated rulemaking procedure.

(2) A person committed to or otherwise incarcerated in a Department of Correctional Services facility may not petition the Department of Correctional Services to request the use of a negotiated rulemaking committee.

Source: Laws 1994, LB 446, § 5.

84-926. Negotiated rulemaking committee established; agency; duties; Secretary of State; duties. (1) If an agency decides to establish a negotiated rulemaking committee, the agency shall:

(a) Give notice to the Secretary of State; and

(b) Publish the notice in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(2) The notice shall include:

(a) An announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) A description of the subject and scope of the rule to be developed and the issues to be considered;

(c) A list of interests likely to be significantly affected by the proposed rule;

(d) A list of the persons proposed to represent the affected interests and the agency;

(e) A proposed schedule for completing the work of the committee; and

(f) An explanation of how a person may apply for or nominate another person for membership on the committee.

(3) The Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of an agency's intent to establish a negotiated rulemaking committee and shall provide such notice to such subscribers at a cost to be assessed against each subscriber. The Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out the notification required by this subsection.

(4) The agency shall provide a period of at least thirty days for the submission of comments upon and applications for membership on a negotiated rulemaking committee.

Source: Laws 1994, LB 446, § 6.

84-927. Negotiated rulemaking committee; establishment; notice of decision; agency support; termination. (1) If, after considering comments and applications for membership on the negotiated rulemaking committee submitted pursuant to section 84-926, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted pursuant to section 84-926, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice of the decision not to establish a negotiated rulemaking committee in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance and support.

(4) A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the agency pursuant to the Administrative Procedure Act unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

Source: Laws 1994, LB 446, § 7.

84-928. Negotiated rulemaking committee; membership; procedure. (1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2) of this section.

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on

the negotiated rulemaking committee. Each petition or nomination shall be submitted to the negotiated rulemaking committee and shall include:

(a) The name of the petitioner or nominee and a description of the interests the person represents;

(b) Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition, a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

Source: Laws 1994, LB 446, § 8.

84-929. Negotiated rulemaking committee; powers and duties; consensus; procedure; report; contents. (1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

Source: Laws 1994, LB 446, § 9.

84-930. Facilitator; selection; duties. (1) An agency may nominate a person to serve as a facilitator for the negotiations of the negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If the committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a negotiated rulemaking committee shall:

(a) Preside at the meetings of the committee in an impartial manner;

(b) Impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and

(c) Manage the keeping of minutes and records.

Source: Laws 1994, LB 446, § 10.

84-931. Convenor or facilitator; contract authorized; state employee; disqualification; members of negotiated rulemaking committee; expenses; per diem; grants or gifts. (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convenor or facilitator for a negotiated rulemaking committee or may use the services of a state employee to act as a convenor or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convenor or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion shall be dropped from further consideration.

(3) Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, an agency may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in sections 81-1174 to 81-1177 and a reasonable per diem rate of compensation if:

(a) The committee member certifies a lack of adequate financial resources to participate in the committee; and

(b) The agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process if:

(a) Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

(b) The grant or gift is given to and accepted by the agency without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

(c) There is consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

Source: Laws 1994, LB 446, § 11.

84-932. Agency action; judicial review; limitation; negotiated rule; judicial review; treatment. Any agency action relating to establishing, assisting, or terminating a negotiated rulemaking committee under the Negotiated Rulemaking Act shall not be subject to judicial review. Nothing in this section shall bar judicial review if such judicial review is otherwise provided by law. A rule which is the product of negotiated rulemaking prior to formal adoption pursuant to the Administrative Procedure Act and is later subject

to judicial review shall not be accorded greater deference by a court than a rule which is the product of the rulemaking procedure of the Administrative Procedure Act alone.

Source: Laws 1994, LB 446, § 12.

OPEN MEETINGS ACT

84-1408. Declaration of intent; meetings open to public. It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source: Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071;
Laws 2004, LB 821, § 35.

84-1409. Terms, defined. For purposes of the Open Meetings Act, unless the context otherwise requires:

(1) (a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions.

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders, and (iii) the Policy Cabinet created in section 81-3009;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Source: Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1;
Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14;
Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1;
Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37;
Laws 2004, LB 821, § 36.

84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops. (1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting . The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct; or

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source: Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1.

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body. (1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of the governing body of an entity formed under the Interlocal Cooperation Act or the Joint Public Agency Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings

specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2.

84-1412. Meetings of public body; rights of public; public body; powers and duties. (1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting. The body may requlre any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an instate location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other instate locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the instate location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting . Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source: Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4;
Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5;
Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2;
Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3.

84-1413. Meetings; minutes; roll call vote; secret ballot; when. (1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality which utilizes an electronic voting device which allows the yeas and nays of each member of the city council or village board to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

Source: Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3;
Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26;
Laws 2005, LB 501, § 1.

84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties. (1) Any motion, resolution, rule, regulation, ordinance, or formal

action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source: Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318;
Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126;
Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074;
Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.