

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 978**

Introduced by Hughes, 44.

Read first time January 11, 2022

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to the Environmental Protection Act; to amend
- 2 sections 81-1508.01 and 81-1511, Reissue Revised Statutes of
- 3 Nebraska, and sections 81-1502, 81-1504, 81-1505, and 81-1532,
- 4 Revised Statutes Cumulative Supplement, 2020; to define a term; to
- 5 provide for powers and duties relating to the treatment of dredged
- 6 and fill material; to establish a fund; to provide a penalty; to
- 7 harmonize provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1502, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 81-1502 For purposes of the Environmental Protection Act, unless the  
4 context otherwise requires:

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

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

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

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

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

21 (6) Department shall mean the Department of Environment and Energy,  
22 which department is hereby created;

23 (7) Director shall mean the Director of Environment and Energy,  
24 which position is hereby established;

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

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

31 (10) Person shall mean any: Individual; partnership; limited

1 liability company; association; public or private corporation; trustee;  
2 receiver; assignee; agent; municipality or other governmental  
3 subdivision; public agency; other legal entity; or any officer or  
4 governing or managing body of any public or private corporation,  
5 municipality, governmental subdivision, public agency, or other legal  
6 entity;

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

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

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

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

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

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

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

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

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

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

17           (21) Waters of the state shall mean all waters within the  
18 jurisdiction of this state, including all streams, lakes, ponds,  
19 impounding reservoirs, marshes, wetlands, watercourses, waterways, wells,  
20 springs, irrigation systems, drainage systems, and all other bodies or  
21 accumulations of water, surface or underground, natural or artificial,  
22 public or private, situated wholly or partly within or bordering upon the  
23 state;

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

29           (23) Effluent limitation shall mean any restriction, including a  
30 schedule of compliance, established by the council on quantities, rates,  
31 and concentrations of chemical, physical, biological, and other

1 constituents which are discharged from point sources into waters of the  
2 state;

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

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

15 (26) Solid waste shall mean any garbage, refuse, or sludge from a  
16 waste treatment plant, water supply treatment plant, or air pollution  
17 control facility and other discarded material, including solid, liquid,  
18 semisolid, or contained gaseous material resulting from industrial,  
19 commercial, and mining operations and from community activities. Solid  
20 waste shall not include slag, a product that is a result of the steel  
21 manufacturing process and is managed as an item of value in a controlled  
22 manner and not as a discarded material; solid or dissolved materials in  
23 irrigation return flows or industrial discharges which are point sources  
24 subject to permits under section 402 of the Clean Water Act, as amended,  
25 33 U.S.C. 1251 et seq.; or source, special nuclear, or byproduct material  
26 as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011  
27 et seq.;

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

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

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

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

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

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

16 (33) Mineral production well shall mean a well drilled to promote  
17 extraction of mineral resources or energy, including, but not limited to,  
18 a well designed for (a) mining of sulfur by the Frasch process, (b)  
19 solution mining of sodium chloride, potash, phosphate, copper, uranium,  
20 or any other mineral which can be mined by this process, (c) in situ  
21 combustion of coal, tar sands, oil shale, or any other fossil fuel, or  
22 (d) recovery of geothermal energy for the production of electric power.  
23 Mineral production well shall not include any well designed for  
24 conventional oil or gas production, for use of fluids to promote enhanced  
25 recovery of oil or natural gas, or for injection of hydrocarbons for  
26 storage purposes;

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

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

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

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

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

6 Sec. 2. Section 81-1504, Revised Statutes Cumulative Supplement,  
7 2020, is amended to read:

8 81-1504 The department shall have and may exercise the following  
9 powers and duties:

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

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

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

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

30 (5) To encourage, participate in, or conduct studies,  
31 investigations, research, and demonstrations relating to air, land, and

1 water pollution and causes and effects, prevention, control, and  
2 abatement of such pollution as it may deem advisable and necessary for  
3 the discharge of its duties under the Environmental Protection Act, the  
4 Integrated Solid Waste Management Act, and the Livestock Waste Management  
5 Act, using its own staff or private research organizations under  
6 contract;

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

10 (7) To issue, modify, or revoke orders: (a) ~~Prohibiting prohibiting~~  
11 or abating discharges of wastes into the air, waters, or land of the  
12 state; ~~and~~ (b) requiring the construction of new disposal systems or any  
13 parts thereof or the modification, extension, or adoption of other  
14 remedial measures to prevent, control, or abate pollution; ~~and (c)~~  
15 prohibiting or abating the discharge of dredged or fill material into  
16 waters of the United States;

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

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

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

31 (11) To issue, continue in effect, revoke, modify, or deny permits,



1 under such conditions as the director may prescribe and consistent with  
2 the standards, rules, and regulations adopted by the council, (a) to  
3 prevent, control, or abate pollution, (b) for the discharge of wastes  
4 into the air, land, or waters of the state, ~~and~~ (c) for the installation,  
5 modification, or operation of disposal systems or any parts thereof, and  
6 (d) for the discharge of dredged and fill material into waters of the  
7 United States;

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

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

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

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

25 (b) To require, for purposes of developing or assisting the  
26 development of any regulation or enforcing any of the provisions of the  
27 Environmental Protection Act which pertain to hazardous waste, any person  
28 who generates, stores, treats, transports, disposes of, or otherwise  
29 handles or has handled hazardous waste, upon request of any officer,  
30 employee, or representative of the department, to furnish information  
31 relating to such waste and any permit involved. Such person shall have

1 access at all reasonable times to a copy of all results relating to such  
2 waste;

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

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

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

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

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

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

31 (22)(a) ~~(22)~~ To receive or initiate complaints of air, water, or

1 land pollution, hold hearings in connection with air, water, or land  
2 pollution, and institute legal proceedings in the name of the state for  
3 the control or prevention of air, water, or land pollution, and for the  
4 recovery of penalties, in accordance with the Environmental Protection  
5 Act, the Integrated Solid Waste Management Act, and the Livestock Waste  
6 Management Act; and

7 (b) To receive and initiate complaints of, hold hearings in  
8 connection with, and institute legal proceedings in the name of the state  
9 for the control, prevention, or abatement of the discharge of dredged and  
10 fill material into waters of the United States and for the recovery of  
11 penalties, in accordance with the Environmental Protection Act;

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

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

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

30 (26) To employ the Governor's Keep Nebraska Beautiful Committee for  
31 such special occasions and projects as the department may decide.

1 Reimbursement of the committee shall be made from state and appropriate  
2 federal matching funds for each assignment of work by the department as  
3 provided in sections 81-1174 to 81-1177;

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

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

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

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

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

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

31 (33) To evaluate permits proposed to be issued to any political

1 subdivision under the National Pollutant Discharge Elimination System  
2 created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., as  
3 provided in section 81-1517;

4 (34) To exercise such powers and duties as may be delegated by the  
5 federal government to administer an individual and general permit program  
6 for the discharge of dredged or fill material consistent with section 404  
7 of the Clean Water Act, as amended, 33 U.S.C. 1344;

8 (35) To serve as or assist in developing and coordinating a central  
9 repository within state government for the collection of data on energy;

10 (36) To undertake a continuing assessment of the trends in the  
11 availability, consumption, and development of all forms of energy;

12 (37) To collect and analyze data relating to present and future  
13 demands and resources for all sources of energy and to specify energy  
14 needs for the state;

15 (38) To recommend to the Governor and the Legislature energy  
16 policies and conservation measures for the state and to carry out such  
17 measures as are adopted;

18 (39) To provide for public dissemination of appropriate information  
19 on energy, energy sources, and energy conservation;

20 (40) To accept, expend, or disburse funds, public or private, made  
21 available to it for research studies, demonstration projects, or other  
22 activities which are related either to energy conservation and efficiency  
23 or development;

24 (41) To study the impact and relationship of state energy policies  
25 to national and regional energy policies and engage in such activities as  
26 will reasonably insure that the State of Nebraska and its residents  
27 receive an equitable share of energy supplies, including the  
28 administration of any federally mandated or state-mandated energy  
29 allocation programs;

30 (42) To actively seek the advice of the residents of Nebraska  
31 regarding energy policies and programs;

1 (43) To prepare emergency allocation plans suggesting to the  
2 Governor actions to be taken in the event of serious shortages of energy;

3 (44) To design and maintain a state program for conservation of  
4 energy and energy efficiency;

5 (45) To provide technical assistance regarding energy to local  
6 subdivisions of government;

7 (46) To provide technical assistance to private persons desiring  
8 information on energy conservation and efficiency techniques and the use  
9 of renewable energy technologies;

10 (47) To develop a strategic state energy plan pursuant to section  
11 81-1604;

12 (48) To develop and disseminate transparent and objective energy  
13 information and analysis while utilizing existing energy planning  
14 resources of relevant stakeholder entities;

15 (49) To actively seek to maximize federal and other nonstate funding  
16 and support to the state for energy planning;

17 (50) To monitor energy transmission capacity planning and policy  
18 affecting the state and the regulatory approval process for the  
19 development of energy infrastructure and make recommendations to the  
20 Governor and electronically to the Legislature as necessary to facilitate  
21 energy infrastructure planning and development;

22 (51) To implement rules and regulations adopted and promulgated by  
23 the director pursuant to the Administrative Procedure Act to carry out  
24 subdivisions (35) through (58) of this section;

25 (52) To make all contracts pursuant to subdivisions (35) through  
26 (58) of this section and do all things to cooperate with the federal  
27 government, and to qualify for, accept, expend, and dispense public or  
28 private funds intended for the implementation of subdivisions (35)  
29 through (58) of this section;

30 (53) To contract for services, if such work or services cannot be  
31 satisfactorily performed by employees of the department or by any other

1 part of state government;

2 (54) To enter into such agreements as are necessary to carry out  
3 energy research and development with other states;

4 (55) To carry out the duties and responsibilities relating to energy  
5 as may be requested or required of the state by the federal government;

6 (56) To cooperate and participate with the approval of the Governor  
7 in the activities of organizations of states relating to the  
8 availability, conservation, development, and distribution of energy;

9 (57) To engage in such activities as will seek to insure that the  
10 State of Nebraska and its residents receive an equitable share of energy  
11 supplies at a fair price; and

12 (58) To form advisory committees of residents of Nebraska to advise  
13 the director on programs and policies relating to energy and to assist in  
14 implementing such programs. Such committees shall be of a temporary  
15 nature, and no member shall receive any compensation for serving on any  
16 such committee but, with the approval of the Governor, members shall  
17 receive reimbursement for expenses as provided in sections 81-1174 to  
18 81-1177. The minutes of meetings of and actions taken by each committee  
19 shall be kept and a record shall be maintained of the name, address, and  
20 occupation or vocation of every individual serving on any committee. The  
21 department shall maintain such minutes and records and shall make them  
22 available for public inspection during regular office hours.

23 Sec. 3. Section 81-1505, Revised Statutes Cumulative Supplement,  
24 2020, is amended to read:

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

1 land contaminant sources according to levels and types of discharges,  
2 emissions, and other characteristics which relate to air, water, and land  
3 pollution and may require reporting for any such class or classes. Such  
4 classifications and standards made pursuant to this section may be made  
5 for application to the state as a whole or to any designated area of the  
6 state and shall be made with special reference to effects on health,  
7 economic and social factors, and physical effects on property. Such  
8 standards and classifications may be amended as determined necessary by  
9 the council.

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

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

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

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

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

30 (e) Procedures pursuant to section 401 of the Clean Water Act, as  
31 amended, 33 U.S.C. 1251 et seq., for certification by the department of



1 activities requiring a federal license or permit which may result in a  
2 discharge.

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

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

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

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

30 (7) In adopting treatment standards, the council shall give  
31 consideration to providing for processes to which wastewater shall be

1 subjected in a publicly owned wastewater treatment works in order to make  
2 such wastewater suitable for subsequent use.

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

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

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

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

30 (iii) The quality of the existing ground water, the effects of  
31 exemption of the aquifer from any existing water quality standards, and

1 requirements for restoration of the aquifer;

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

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

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

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

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

1 (d) For the purpose of this subsection, unless the context otherwise  
2 requires, restoration shall mean the employment, during and after an  
3 activity, of procedures reasonably designed to control, minimize, and  
4 eliminate hazards to humans, animals, and the environment, to protect the  
5 public health and welfare and air, land, water, and subsurface resources,  
6 and to return each resource to a quality of use consistent with the uses  
7 for which the resource was suitable prior to the activity.

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

16 (11) In adopting regulations for the issuance of permits under the  
17 National Pollutant Discharge Elimination System created by the Clean  
18 Water Act, as amended, 33 U.S.C. 1251 et seq., the council shall consider  
19 when such permits shall be required and exemptions, application and  
20 filing requirements, terms and conditions affecting such permits, notice  
21 and public participation, duration and review of such permits, the  
22 evaluation provided for under section 81-1517, and monitoring, recording,  
23 and reporting under the system.

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

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

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

1 require permits for both new and existing sources;

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

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

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

28 (f) Classification of air quality control regions;

29 (g) Standards for air quality that may be established based upon  
30 protection of public health and welfare, emission limitations established  
31 by the United States Environmental Protection Agency, and maximum

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

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

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

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

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

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

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

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

28 (l) Provisions for periodic reporting of emissions;

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

1 (n) Time schedules for compliance;

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

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

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

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

28 In addition the council shall give consideration to (i) ground water  
29 monitoring, (ii) use and management of containers and tanks, (iii)  
30 surface impoundments, (iv) waste piles, (v) land treatment, (vi)  
31 incinerators, (vii) chemical or biological treatment, (viii) landfills

1 including the surveying thereof, and (ix) special requirements for  
2 ignitable, reactive, or incompatible wastes.

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

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

25 (b) In adopting regulations for hazardous waste management, the  
26 council shall consider, in addition to criteria in subdivision (a) of  
27 this subsection, establishing criteria for (i) identifying hazardous  
28 waste including extraction procedures, toxicity, persistence, and  
29 degradability in nature, potential for accumulation in tissue,  
30 flammability or ignitability, corrosiveness, reactivity, and generation  
31 of pressure through decomposition, heat, or other means, and other



1 hazardous characteristics, (ii) listing all materials it deems hazardous  
2 and which should be subject to regulation, and (iii) locating treatment,  
3 storage, or disposal facilities for such wastes. In adopting criteria for  
4 flammability and ignitability of wastes pursuant to subdivision (b)(i) of  
5 this subsection, no regulation shall be adopted without the approval of  
6 the State Fire Marshal.

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) Exemptions from permits of the department; and
- 2 (j) The Integrated Solid Waste Management Act.

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

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

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

1 the discharge of wastes into the air, water, or land of this state which  
2 results in reducing the quality of such air, water, or land below the  
3 standards established therefor by the council.

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

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

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

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

31 (i) A surety bond executed by the applicant and a corporate surety

1 licensed to do business in this state;

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

9 (iii) An established escrow account; or

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

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

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

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

31 (22)(a) The council shall adopt and promulgate rules and regulations

1 no more stringent than the provisions of section 1453 et seq. of the  
2 federal Safe Drinking Water Act, as amended, 42 U.S.C. 300j-13 et seq.,  
3 for public water system source water assessment programs.

4 (b) The council may adopt and promulgate rules and regulations to  
5 implement a source water petition program no more stringent than section  
6 1454 et seq. of the federal Safe Drinking Water Act, as amended, 42  
7 U.S.C. 300j-14 et seq.

8 (23) The council may adopt and promulgate rules and regulations for  
9 the issuance of permits relating to the discharge of dredged or fill  
10 material into the waters of the United States under section 404 of the  
11 Clean Water Act, as amended, 33 U.S.C. 1251 et seq., giving consideration  
12 to (a) when such permits are required and exemptions, application, and  
13 filing requirements, (b) terms and conditions affecting such permits,  
14 notice and public participation, and duration, (c) review of such  
15 permits, (d) monitoring, recording, and reporting requirements, (e)  
16 compensatory mitigation, and (f) ~~(e)~~ such other requirements not  
17 inconsistent with the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

18 (24) The council may establish fees for applications,  
19 determinations, permits, licenses, or similar authorizations for the  
20 discharge of dredged and fill material under section 404 of the Clean  
21 Water Act, as amended, 33 U.S.C. 1251 et seq., to be collected by the  
22 department. The fees shall be sufficient to pay the department for the  
23 direct and indirect costs of administering a permitting program under  
24 section 404 of the Clean Water Act.

25 Sec. 4. The Dredge and Fill Cash Fund is hereby created. The  
26 department shall remit all fees collected pursuant to subsection (24) of  
27 section 81-1505 and money received by the department in the form of  
28 gifts, grants, reimbursements, or monetary transfers from any source  
29 intended to be used for the purposes of the fund, to the State Treasurer  
30 for credit to the fund. The fund shall be used to pay the reasonable  
31 direct and indirect costs required to develop and administer a program to

1 regulate discharges of dredged and fill material under section 404 of the  
2 Clean Water Act, as amended, 33 U.S.C. 1251 et seq. Any money in the fund  
3 available for investment shall be invested by the state investment  
4 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
5 State Funds Investment Act.

6 Sec. 5. Section 81-1508.01, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 81-1508.01 (1) Any person who violates the Environmental Protection  
9 Act, the Integrated Solid Waste Management Act, or the Livestock Waste  
10 Management Act by knowingly and willfully committing any of the following  
11 offenses shall be guilty of a Class IV felony:

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

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

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

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

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

31 (f) Falsifying, tampering with, or rendering inaccurate any

1 monitoring device or method used or required for compliance with any  
2 permit or license or the Environmental Protection Act, the Integrated  
3 Solid Waste Management Act, or the Livestock Waste Management Act or the  
4 rules or regulations adopted and promulgated pursuant to such acts; ~~or~~

5 (g) Transporting hazardous waste to an unpermitted facility; or ~~or~~

6 (h) Violating any law, rule, regulation, permit, license, or permit  
7 or license condition or limitation for the discharge of dredged and fill  
8 material under section 404 of the Clean Water Act, as amended, 33 U.S.C.  
9 1251 et seq.

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

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

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

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

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

30 Sec. 6. Section 81-1511, Reissue Revised Statutes of Nebraska, is  
31 amended to read:



1           81-1511 Any duly authorized officer, employee, or representative of  
2 the director may at any reasonable time, with the consent of the person  
3 or persons in control of an air, land, or water contaminant source, or  
4 property where dredged or fill material is being discharged, enter and  
5 inspect any property, premise, or place on or at which such a contaminant  
6 source is located or being constructed, installed, or established, or  
7 where such dredged or fill material is being discharged, for the purpose  
8 of ascertaining the state of compliance with the Environmental Protection  
9 Act, the Integrated Solid Waste Management Act, and the Livestock Waste  
10 Management Act and rules and regulations in force pursuant to the acts. A  
11 suitably restricted search warrant, upon a showing of probable cause in  
12 writing and upon oath or affirmation, may be issued by the district court  
13 as provided by law to such officer, employee, or representative of the  
14 department for the purpose of enabling him or her to make such  
15 inspection. No person shall refuse entry or access to any authorized  
16 representative of the department who requests entry for purposes of  
17 inspection and who presents appropriate credentials and warrants. No  
18 person shall obstruct, hamper, or interfere with any such inspection.  
19 Nothing in this section shall be construed to prevent prompt inspection  
20 without consent or appropriate warrant in acute and compelling emergency  
21 situations when there is neither sufficient time nor opportunity to  
22 obtain a search warrant. If requested, the owner or operator of the  
23 premises shall receive a report setting forth all facts found which  
24 relate to compliance status.

25           Sec. 7. Section 81-1532, Revised Statutes Cumulative Supplement,  
26 2020, is amended to read:

27           81-1532 Sections 81-1501 to 81-1532 and section 4 of this act shall  
28 be known and may be cited as the Environmental Protection Act.

29           Sec. 8. Original sections 81-1508.01 and 81-1511, Reissue Revised  
30 Statutes of Nebraska, and sections 81-1502, 81-1504, 81-1505, and  
31 81-1532, Revised Statutes Cumulative Supplement, 2020, are repealed.