

LEGISLATIVE BILL 132

Approved by the Governor February 24, 1977

Introduced by Agriculture and Environment Committee,
Schmit, 23, Chmn.; R. Maresh, 32; Lamb, 43;
Burrows, 30; Hefner, 19; Venditte, 7; Kahle,
37; DeCamp, 40

AN ACT to amend section 81-1506, Revised Statutes Supplement, 1976, relating to the Environmental Protection Act; to provide that compliance with specified conditions by a livestock operation shall create a presumption that such operation is not a nuisance; and to repeal the original section.
Be it enacted by the people of the State of Nebraska,

Section 1. That section 81-1506, Revised Statutes Supplement, 1976, be amended to read as follows:

81-1506. (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. It shall be prima facie evidence that a livestock 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 a livestock operation is subsequent either to the issuance of an appropriate permit by the department for such operation, or to the operation of the feedlot and an on-site 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 carry on any of the following activities unless he holds a current permit therefor from the department, as is required by it, for the disposal of all wastes which are or may be discharged or emitted thereby into the air, waters or land of the state:

(a) Discharges for which a permit is required under the National Pollutant Discharge Elimination System created by the Federal Water Pollution Control Act Amendments of 1972 in which case the issuance of such permits shall be according to rules and regulations adopted by the council pursuant to subsection (11) of section 81-1505 and to which other provisions of this section shall not apply;

(b) The construction, installation, modification or operation of any disposal system or part thereof or any extension or addition thereto;

(c) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;

(d) The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification thereof or addition thereto, the operation of which would cause an increase in the discharge or emission of wastes into the air, waters or land of the state or would otherwise alter the physical, chemical or biological properties of any air, waters or land of the state in any manner not already lawfully authorized; or

(e) The construction or use of any new outlet for the discharge of any wastes into the air, waters or land of the state.

The department, under such conditions as it may prescribe, shall for the review, recommendations and written approval of the director require the submission of such plans, specifications and other information as it deems necessary to carry out the provisions of sections 81-1501 to 81-1532 or to carry out the rules and regulations adopted pursuant to the provisions of sections 81-1501 to 81-1532. When deemed necessary by the director, such plans and specifications shall be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska.

(3) If within thirty days of the receipt of plans, specifications or other information required pursuant to this section the department determines that

the proposed construction, installation or establishment will not be in accordance with the requirements of sections 81-1501 to 81-1532 or applicable rules and regulations, it shall issue a preliminary order prohibiting the construction, installation or establishment of the air, water or land contaminant source or sources. Failure of such an order to issue within the time prescribed in this subsection shall be deemed a determination that the construction, installation or establishment may proceed, if it is in accordance with the plans, specifications or other information, if any, required to be submitted.

(4) In addition to any other remedies available on account of the issuance of a preliminary order disapproving construction, installation, or establishment and prior to invoking any such remedies, the person aggrieved thereby shall, upon request and in accordance with rules of practice and procedure of the department, be entitled to a hearing on the order. Following such hearing, the preliminary order may be affirmed, modified or withdrawn by a final order of the director which order shall be subject to review as provided in section 81-1509.

(5) 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, or the kind or composition of fuels permitted to be sold, stored or used.

(6) Failure by the department to issue an order pursuant to this section shall not relieve any person from compliance with any emission or discharge control requirements or with any other provision of law.

Sec. 2. That original section 81-1506, Revised Statutes Supplement, 1976, is repealed.