

## LEGISLATIVE BILL 1226

Approved by the Governor April 15, 1996

Introduced by Bromm, 23; Beutler, 28; Bohlke, 33; Cudaback, 36; Elmer, 44; Hillman, 48; Janssen, 15; Jones, 43; Preister, 5; Vrtiska, 1; Brown, 6; McKenzie, 34

AN ACT relating to the environment; to amend sections 66-1524, 81-1504, 81-15,117, 81-15,119, 81-15,120, 81-15,124.01, 81-15,148 to 81-15,151, and 81-15,152 to 81-15,155, Reissue Revised Statutes of Nebraska, and sections 66-1501, 66-1509, 66-1513, 66-1514, 66-1518, 66-1519, 66-1522, 66-1523, 66-1525, and 66-1529.01, Revised Statutes Supplement, 1994; to change provisions of the Petroleum Release Remedial Action Act, the Petroleum Products and Hazardous Substances Storage and Handling Act, and the Wastewater Treatment Facilities Construction Assistance Act; to authorize interfund transfers; to define and redefine terms; to provide powers and duties; to change payment and reimbursement procedures and rule and regulation provisions; to create a technical advisory committee; to provide requirements for remedial actions; to authorize loans for nonpoint source control systems; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 66-1501, Revised Statutes Supplement, 1994, is amended to read:

66-1501. Sections 66-1501 to 66-1530 and section 2 of this act shall be known and may be cited as the Petroleum Release Remedial Action Act.

Sec. 2. (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 not treated as part of the unobligated balance for the purposes of section 66-1522, 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.

Sec. 3. Section 66-1509, Revised Statutes Supplement, 1994, is amended to read:

66-1509. (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.

Sec. 4. Section 66-1513, Revised Statutes Supplement, 1994, is amended to read:

66-1513. 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.

Sec. 5. Section 66-1514, Revised Statutes Supplement, 1994, is amended to read:

66-1514. 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.

Sec. 6. Section 66-1518, Revised Statutes Supplement, 1994, is amended to read:

66-1518. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations regarding the form and procedure for applications for payment or reimbursement from the fund; procedures for investigation of 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 auditing persons who have received payments from the fund; and other provisions necessary to carry out the Petroleum Release Remedial Action Act.

(2) 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;

(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 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) Such 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 19 of this act.

(3) The director 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 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) (3) The department, in consultation with interested parties, shall report to the Legislature at the beginning of every third year during which the fund is in existence on the availability of private insurance to insure the damages for which payment may be made from the fund.

Sec. 7. Section 66-1519, Revised Statutes Supplement, 1994, is amended to read:

66-1519. 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:

(1) The fees imposed by sections 66-1520 and 66-1521;

(2) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(3) 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.

Money in the fund may only 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 December 31, 1998, 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; and (e) appraisal and other costs related to tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; and (g) expenses incurred by the technical advisory committee created in section 19 of this act in carrying out its duties pursuant to section 20 of this 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.

Sec. 8. Section 66-1522, Revised Statutes Supplement, 1994, is amended to read:

66-1522. (1) The Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue shall collect the fee imposed by subsection (1) of section 66-1521. Whenever the unobligated balance of the fund reaches five ten million dollars or more, the Department of Environmental Quality shall notify the division, at which time the division shall suspend the collection of the fee. If the unobligated balance of the fund falls below three million dollars, the department shall notify the division which shall again start the collection of the fee until the unobligated balance of the fund reaches five ten million dollars. If the actual cash balance of the fund as reported by the accounting division of the Department of Administrative Services falls below two million dollars, the Department of Environmental Quality shall notify the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue which shall start collection of an additional fee of three-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and an additional fee of one-tenth of one cent per gallon on petroleum other than such motor vehicle fuel until the actual cash balance of the fund as reported by the accounting division reaches four eight million dollars.

(2) Unobligated balance shall be the balance in the fund as of the twentieth last day of any month less the estimated cost of the remedial action plans or third-party-claim payments which have been approved by the Department of Environmental Quality for the applications for reimbursement pending before the department. Such estimated cost shall be determined by the department.

(3) The effective date of the notification shall be the first day of the next month following receipt of such notification by the division if the notification is received thirty days prior to the first day of the next month. If the notification is not received thirty days prior to the first day of the next month, the effective date of such notification shall be the first day of the following month.

Sec. 9. Section 66-1523, Revised Statutes Supplement, 1994, is amended to read:

66-1523. (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 in an amount not to exceed nine hundred seventy-five thousand dollars per occurrence for the cost of remedial action for releases reported after July 17, 1983, and on or before December 31, 1998, and for the cost of paying third-party claims. 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 in an

amount not to exceed nine hundred eighty-five thousand dollars per occurrence for the cost of remedial action for releases reported after July 17, 1983, and on or before December 31, 1998, and for the cost of paying third-party claims. 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 the effective date of this act shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) 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.

Sec. 10. Section 66-1524, Reissue Revised Statutes of Nebraska, is amended to read:

66-1524. 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 the effective date of this act, 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 the effective date of this act, applicants shall request payment of interest within ninety days of such date. For applications filed after the effective date of this act, all provisions of the Prompt Payment Act shall apply.

Sec. 11. Section 66-1525, Revised Statutes Supplement, 1994, is amended to read:

66-1525. (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 December 31, 1998, 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 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.

Sec. 12. Section 66-1529.01, Revised Statutes Supplement, 1994, is amended to read:

66-1529.01. Any tangible personal property shall be owned proportionately by the responsible person and the department based upon the amount of fund revenue used in the remedial action.

If the department and the responsible person agree on the value of tangible personal property which is no longer needed for remedial action, the department shall pay to the responsible person his or her share of the value based upon the percentage paid by that person of the cost of the remedial action. Payment may be made either from the proceeds of the sale of the property or directly from the fund. Upon payment to the responsible person, title to the property shall vest in the state, and the property may be used in other remedial actions, stored until needed, maintained, or sold. The department may require responsible persons to use previously used equipment or property in remedial actions pursuant to procedures adopted under section 66-1518. If the responsible person and the department cannot agree upon the fair market value or salvage value of the property, the property shall be sold or otherwise liquidated and the responsible person shall receive his or her share of the proceeds. The department's portion of proceeds of the sale of the property shall be deposited in the fund. Any tangible personal property remaining in existence at the close of a remedial action shall be owned proportionately by the responsible person and the department. If the responsible person and the department cannot agree upon the fair market value or salvage value of the property, either party may demand, in writing to the other party, that the property be appraised for determination of fair market value or salvage value. The cost of appraisal shall be paid from the fund.

The department shall pay to the responsible person his or her proportionate share of the fair market value or salvage value based upon the percentage paid by that person of the total cost of the remedial action, except that the responsible person's share shall in no case exceed twenty-five percent of the fair market value or salvage value of the property. Payment may be made either from the proceeds of the sale of the property or directly from the fund. Upon payment to the responsible person, title to the property shall vest in the state, and the property may be used in other remedial actions, stored until needed, maintained, or sold. Proceeds of the sale of the property shall be deposited in the fund.

Sec. 13. Section 81-1504, Reissue Revised Statutes of Nebraska, is amended to read:

81-1504. 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 and the Integrated Solid 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 and the Integrated Solid 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 and the Integrated Solid 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 and the Integrated Solid 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, and the Integrated Solid 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 and the Integrated Solid 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 or the Integrated Solid 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 and the Integrated Solid 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 and the Integrated Solid 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 and the Integrated Solid 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 duly registered to practice in Nebraska; ~~and~~

(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.

Sec. 14. Section 81-15,117, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,117. Sections 81-15,117 to 81-15,127 and section 17 of this act shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

Sec. 15. Section 81-15,119, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,119. 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 of 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) Regulated substance shall mean:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under subtitle C of such act; and

(b) 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) 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;

(7) 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;

(8) 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, mineworking, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor;

(e) Pipeline facility, including gathering lines:

(i) Regulated under the Natural Gas Pipeline Safety Act of 1979, 49 U.S.C. app. 1671;

(ii) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. app. 2001; or

(iii) Which is an intrastate pipeline regulated under state law comparable to the laws prescribed in subdivisions (e)(i) and (e)(ii) 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

(9) ~~(8)~~ 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.

Sec. 16. Section 81-15,120, Reissue Revised Statutes of Nebraska,

is amended to read:

81-15,120. Any farm or residential tank or tank used for storing heating oil as defined in subdivisions ~~(7)(a) and (7)(b)~~ (8)(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.

Sec. 17. 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.

Sec. 18. Section 81-15,124.01, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,124.01. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations 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 19 of this act. The Environmental Quality Council shall adopt and promulgate rules and regulations governing the plan for remedial action to be taken by owners and operators pursuant to section 81-15,124.

Sec. 19. 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 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; and

(11) 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.

Sec. 20. (1) The technical advisory committee created in section 19 of this act shall make recommendations to the Natural Resources Committee of the Legislature relative to (a) whether those holding themselves out as consultants for remedial action projects should be certified and (b) the use of land in areas where contamination is left in place under risk-based corrective action.

(2) The technical advisory committee shall make recommendations for draft rules and regulations to implement the Petroleum Products and Hazardous Substances Storage and Handling Act and amendments to existing rules and regulations to implement the Petroleum Release Remedial Action Act. The technical advisory committee 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 guidance for risk-based corrective action as applied at petroleum release sites. The department shall submit the committee's recommendations regarding rules and regulations to the Environmental Quality Council for consideration.

(3) In an effort to assist the department in classifying petroleum contaminated sites and in planning for the remedial action at such sites, the technical advisory committee should make:

(a) Recommendations to the department relative to revisions to guidance manuals, protocols, or any other material generated by the department and used to administer the Petroleum Products and Hazardous Substances Storage and Handling Act and the Petroleum Release Remedial Action Act;

(b) Recommendations regarding revisions to the current site classification system, taking 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 guide for risk-based corrective action applied at petroleum release sites;

(c) Recommendations for a guidance manual directing the collection of specific information at the time of tank excavation for purposes of assessing preliminary technical data and to more quickly determine appropriate classification of a site; and

(d) Recommendations regarding numbers of monitoring wells required in conjunction with site assessment and cleanup.

(4) The technical advisory committee shall make recommendations to the department regarding:

(a) A reasonable number of remedial actions per year to be undertaken at petroleum release sites;

(b) A reasonable number of evaluations at petroleum release sites to be conducted per year to determine whether appropriate cleanup levels have been met and the site closed; and

(c) A reasonable number of monitored petroleum sites to be evaluated per year for purposes of determining whether monitoring requirements should be minimized or terminated and the site closed.

(5) The technical advisory committee shall submit a written report to the department detailing the committee's recommendations regarding rules, regulations, and other recommendations listed in this section.

(6) The technical advisory committee shall cease to exist on March 1, 1998.

Sec. 21. Section 81-15,148, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,148. 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.

Sec. 22. Section 81-15,149, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,149. As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act ~~shall mean~~ means the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction ~~shall mean~~ 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 ~~shall mean~~ means the Environmental Quality Council;

(4) County ~~shall mean~~ means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;

(5) Department ~~shall mean~~ means the Department of Environmental Quality;

(6) Fund ~~shall mean~~ means the Wastewater Treatment Facilities Construction Loan Fund;

(7) Municipality ~~shall mean~~ 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 relate to landfill monitoring and remediation, wellhead area protection, or stormwater management;

(9) Operate and maintain ~~shall mean~~ 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) ~~(9)~~ Wastewater treatment works ~~shall mean~~ means the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Sec. 23. Section 81-15,150, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,150. 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.

Sec. 24. Section 81-15,151, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,151. (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 2 of this act.

(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.

Sec. 25. Section 81-15,152, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,152. 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) ~~(4)~~ 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) ~~(5)~~ The power to determine the maximum amount of any one loan or combination of loans for any single municipality or any single county; and

(7) ~~(6)~~ 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.

Sec. 26. Section 81-15,153, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,153. 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. The department shall propose such rules and regulations to the council no later than July 1, 1997;

(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) ~~(3)~~ The duty to prepare an annual report for the Governor and the Legislature;

(5) ~~(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 fund;

(c) Accounting for disbursements made by the fund; and

(d) Balancing the fund at the beginning and end of the accounting period;

(6) ~~(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;

(7) ~~(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;

(8) ~~(7)~~ The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

(9) ~~(8)~~ The power to make state allocations concurrent with loans to municipalities with populations of eight hundred inhabitants or less which demonstrate serious financial hardships. The annual obligation to the state shall not exceed three 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. All funds appropriated shall be administered on a cash-flow basis utilizing General Funds appropriated to Agency No. 84 -- Department of Environmental Quality, Program No. 523 - Wastewater Facilities Construction Assistance Program, to meet payment requirements as they occur. The department shall submit to the Governor and the Clerk of the Legislature a semiannual report on January 1 and July 1 of each year containing information which shows the financial status of the program, including a statement of the fund balance, an itemized list of all conditional grants made to municipalities, including actual and estimated amounts and the time of payouts, the necessary appropriations required to meet those grants, and any other information which will reflect the progress and financial status of the program. Each member of the Legislature shall receive a copy of the report required by this subdivision by making a request for it to the department; and

(10) ~~(9)~~ Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 27. Section 81-15,154, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,154. 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 interceptors and appurtenances; land integral to the treatment process; and

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.

Sec. 28. Section 81-15,155, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,155. (1) All loans ~~Loans~~ made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities or to counties that:

(a) ~~(1)~~ Meet the requirements of financial capability set by the department;

~~(2)~~ Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;

~~(b)~~ ~~(3)~~ Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

~~(4)~~ Provide capacity for twenty years domestic and industrial growth or reasonable capacity as determined by the department;

~~(5)~~ 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;

(c) ~~(6)~~ Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;

~~(d)~~ ~~(7)~~ 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)~~ ~~(8)~~ 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;

~~(9)~~ Provide a certified operator pursuant to voluntary or mandatory certification programs, whichever is in effect;

~~(f)~~ ~~(10)~~ Provide a written notice of completion and start of operation of the facility; and

(g) ~~(11)~~ 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.

(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.

Sec. 29. Original sections 66-1524, 81-1504, 81-15,117, 81-15,119, 81-15,120, 81-15,124.01, 81-15,148 to 81-15,151, and 81-15,152 to 81-15,155, Reissue Revised Statutes of Nebraska, and sections 66-1501, 66-1509, 66-1513, 66-1514, 66-1518, 66-1519, 66-1522, 66-1523, 66-1525, and 66-1529.01, Revised Statutes Supplement, 1994, are repealed.

Sec. 30. Since an emergency exists, this act takes effect when passed and approved according to law.