LEGISLATIVE BILL 461

Approved by the Governor May 30, 2001

Introduced by Aguilar, 35; Burling, 33; Janssen, 15; Kremer, 34; Tyson, 19; McDonald, 41

AN ACT relating to environmental protection; to amend sections 66-1516, 81-1505.04, 81-15,117, 81-15,119, 81-15,120, and 81-15,160, Reissue Revised Statutes of Nebraska, and sections 66-1518, 66-1519, 66-1523, 66-1525, 66-1529.02, and 81-1532, Revised Statutes Supplement, 2000; to change provisions relating to petroleum release remedial action reimbursements and methyl tertiary butyl ether testing; to change and eliminate provisions relating to emission fees; to limit grants and loans; to change provisions relating to the Waste Reduction and Recycling Incentive Fund; to eliminate an obsolete provision; to change provisions relating to the Petroleum Products and Hazardous Substances Storage and Handling Act; to define and redefine terms; to provide for a covenant not to sue; 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 66-1516, Reissue Revised Statutes of Nebraska, is amended to read:

66-1516. Except as provided in section 13 of this act, no ~~No~~ responsible person may avoid responsibility under state law for a release or third-party claim by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold-harmless, or similar agreement. This section shall not be construed to:

(1) Prohibit a responsible person from entering into an agreement by which the person is insured or is a member of a risk retention group and is thereby indemnified for part or all of the liability;

(2) Prohibit the enforcement of an insurance, hold-harmless, or indemnification agreement; or

(3) Bar a cause of action brought by a responsible person or by an insurer or guarantor, whether by right of subrogation or otherwise.

Sec. 2. Section 66-1518, Revised Statutes Supplement, 2000, is amended to read:

66-1518. (1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) Such rules and regulations shall take into account the recommendations for rules and regulations developed by the technical advisory committee established pursuant to section 81-15,189.

(3) The Director of Environmental Quality shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of

all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(4) The Department of Environmental Quality shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

(5) The Department of Environmental Quality and the Department of Insurance, in consultation with interested parties, shall report to the Legislature on or before ~~October 1, 1999~~ December 1, 2001, on the availability and cost of private insurance to insure the damages for which payment may be made from the fund.

Sec. 3. Section 66-1519, Revised Statutes Supplement, 2000, 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 June 30, ~~2001~~ 2005, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) expenses incurred by the technical advisory committee created in section 81-15,189 in carrying out its duties pursuant to section 81-15,190; ~~and~~ (h) claims approved by the State Claims Board authorized under section 66-1531; and (i) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.

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. 4. Section 66-1523, Revised Statutes Supplement, 2000, 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 for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, ~~2001~~ 2005, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of

any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, ~~2001~~ 2005, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, ~~2001~~ 2005.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Sec. 5. Section 66-1525, Revised Statutes Supplement, 2000, 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 June 30, ~~2001~~ 2005, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Sec. 6. Section 66-1529.02, Revised Statutes Supplement, 2000, is amended to read:

66-1529.02. (1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, ~~2001~~ 2005, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Sec. 7. Section 81-1505.04, Reissue Revised Statutes of Nebraska, is amended to read:

81-1505.04. (1) The department shall collect an annual emission fee from major sources of air pollution. Each major source shall pay the emission fee for regulated pollutants in the amount of twenty-five dollars per ton per pollutant or as adjusted pursuant to this section. The fee shall be based upon the amount of emissions of each regulated pollutant as reported or estimated by the source in the previous calendar year, but fees shall not be paid on amounts in excess of four thousand tons per year for any regulated pollutant. ~~In the case of~~ Beginning with calendar year 2001 emissions, for an electric generation facility with a nameplate generating capacity of between seventy and one hundred fifteen megawatts which is not operating in a political subdivision which has been delegated the authority to enforce the air quality permit program within its jurisdiction, fees shall not be paid on amounts in excess of four hundred tons per year for any regulated pollutant. ~~through 1997. Any surplus emission fees remaining in the Clean Air Title V Cash Fund on June 30, 1996, and on June 30, 1997, shall be used first to offset any reduction in emission fee revenue resulting from lowering from four thousand tons per year to four hundred tons per year the maximum number of tons of emissions to be charged a fee for certain electric generation facilities as described in this subsection.~~

~~(2) It is the intent of the Legislature that, beginning in 1998, fees to be paid to the department by each major source shall be based upon both actual emissions pursuant to subsection (1) of this section and actual costs incurred by the department to administer the program for such source. Under such fee structure, the department shall estimate total annual air quality permit program costs and shall calculate the fee by deriving fifty percent of the total through an emission fee from each major source as described in this section. The remaining fifty percent of the costs shall be collected from each major source by proportionately allocating to each such source its percentage share for direct and indirect costs incurred by the department for permit review, issuance, monitoring, and administration of the federal Clean Air Act Title V program. If the Legislature does not enact such a fee structure prior to June 30, 1998, the department shall calculate the emission fee as set out in subsections (1) and (3) of this section.~~

~~(3)(a)~~ (2)(a) The emission fee may be increased or decreased

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

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

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

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

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

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

(v) Preparing generally applicable regulations or guidance;

(vi) Modeling, analyses, or demonstrations;

(vii) Preparing inventories and tracking emissions; and

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

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

~~(4)~~ (3) On or before January 1 of each year, the department shall submit a report to the Legislature in sufficient detail to document all direct and indirect program costs incurred in the previous fiscal year in carrying out the air quality permit program. The Appropriations Committee of the Legislature shall review such report in its analysis of executive programs in order to verify that revenue generated from emission fees was used solely to offset appropriate and reasonable costs associated with the air quality permit program. ~~After January 1, 1997, the~~ The report shall identify costs incurred by the department to administer the permit program for each major source. In addition, the department shall identify costs incurred by primary activity not specific to a major source.

~~(5) The department shall, by December 1, 1996, propose options for determining the amount of the fees referred to in subsection (2) of this section to be contained in a report to the Natural Resources Committee of the Legislature. The department shall include in the report (a) an estimate of the amount of emissions that have been reduced since the emission fee was established in Nebraska and (b) a discussion of options for incentives to reduce emissions. The report shall describe annual program costs for the previous fiscal year, identify primary activities recommended to be included in a cost tracking system, estimate the cost of administering a cost tracking system capable of showing costs for each major source as well as primary activity which is not specific to a major source, and compare the various types of program funding options. The department shall notify all major sources and other interested parties of the development of the report to solicit input from such parties. Upon receipt of the report the Natural Resources Committee of the Legislature shall hold one or more public hearings concerning air quality permit program funding options.~~

~~(6) Beginning July 1, 1996, the~~ (4) The department shall administer a cost tracking system which shall show costs for each major source and costs for each primary activity that is not specific to a major source. The department shall consult with interested parties regarding identification of primary activities to be tracked by the cost tracking system.

Sec. 8. Section 81-1532, Revised Statutes Supplement, 2000, is amended to read:

81-1532. Sections 81-1501 to 81-1532 and section 9 of this act shall be known and may be cited as the Environmental Protection Act.

Sec. 9. No disbursements from grants or loans administered pursuant to the Environmental Protection Act shall be made for projects related to tire-derived fuel.

Sec. 10. 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 sections 13 to 15 of this act shall be known and may be cited as the Petroleum Products and Hazardous Substances Storage and Handling Act.

Sec. 11. 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) Petroleum product shall mean any petroleum product, including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas;

~~(5)~~ (6) Regulated substance shall mean~~:~~

~~(a)~~ ~~Any~~ any petroleum product and any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as such act existed on the effective date of this act, 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)~~ (7) Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a tank or any overfilling of a tank into ground water, surface water, or subsurface soils;

~~(7)~~ (8) Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action which is reasonable and necessary;

~~(8)~~ (9) Risk-based corrective action shall mean an approach to petroleum release corrective actions in which exposure and risk assessment practices, including appropriate consideration of natural attenuation, are

integrated with traditional corrective actions to ensure that appropriate and cost-effective remedies are selected that are protective of human health and the environment;

~~(9)~~ (10) Tank shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Tank shall not include any:

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

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

(c) Septic tank;

(d) Tank situated in an underground area such as a basement, cellar, 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~~ Defined under ~~the Natural Gas Pipeline Safety Act of 1979,~~ 49 U.S.C. ~~app. 1671~~ 60101, as such section existed on the effective date of this act; or

(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~~ law prescribed in ~~subdivisions~~ subdivision (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

~~(10)~~ (11) Temporary abandonment shall mean that a tank will be or has been out of service for at least one hundred eighty days but not more than one year.

Sec. 12. 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 ~~(9)(a)~~ (10)(a) and (b) of section 81-15,119 shall be registered with the State Fire Marshal. The registration shall be accompanied by a one-time fee of five dollars and shall be valid until the State Fire Marshal is notified that a tank so registered has been permanently closed. Such registration shall specify the ownership of, location of, and substance stored in the tank to be registered. The State Fire Marshal shall remit the fee to the State Treasurer for credit to the Petroleum Products and Hazardous Substances Storage and Handling Fund which is hereby created as a cash fund. The fund shall also consist of any money appropriated to the fund by the state. The fund shall be administered by the Department of Environmental Quality to carry out the purposes of the Petroleum Products and Hazardous Substances Storage and Handling Act, including the provision of matching funds required by Public Law 99-499 for actions otherwise authorized by the act. Any money in such fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 13. (1) If a remedial action plan submitted by a responsible person as defined in section 66-1514 is approved or deemed to be approved by the Department of Environmental Quality pursuant to subdivision (2) of section 81-15,124 and has been carried out, the department may issue to the responsible person a certificate of completion stating that no further remedial action needs to be taken at the site relating to any contamination for which remedial action has already been taken in accordance with the approved remedial action plan. The department shall condition the certificate of completion upon compliance with any monitoring, institutional, or technological controls that may be necessary and which were relied upon by the responsible person to demonstrate compliance with the remedial action plan. Any certificate of completion issued pursuant to this section shall be in a form which can be filed for record in the real estate records of the county in which the remedial action took place. The responsible person shall file the certificate of completion and notify the department within ten days after issuance as to the date and location of the real estate filing. If the department issues a certificate of completion to a responsible person under this section, a covenant not to sue shall arise by operation of law subject to subsection (2) of this section. The covenant not to sue releases the

responsible person from liability to the state and from liability to perform additional environmental assessment, remedial activity, or response action with regard to the release of a petroleum product for which the responsible person has complied with the requirements of this subsection. The covenant not to sue shall be voided if the responsible person fails to conduct additional remedial action as required under subsection (2) of this section, if a certificate of completion is revoked by the department under subsection (3) of this section, or if the responsible person fails to comply with the monitoring, institutional, or technological controls, if any, upon which the certificate of completion is conditioned.

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

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

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

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

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

Sec. 14. Upon issuance of a certificate of completion under section 13 of this act, except as otherwise provided in such section, the responsible person shall no longer have liability to the state as to the release of petroleum products for which compliance with the remedial action plan is demonstrated by the responsible person.

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

(2) The fact that a responsible person has participated in a remedial action plan is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce sections 13 to 15 of this act.

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

Sec. 16. Section 81-15,160, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,160. (1) The Waste Reduction and Recycling Incentive Fund is created. The department shall deduct from the fund amounts sufficient to reimburse itself for its costs of administration of the fund. The fund shall be administered by the Department of Environmental Quality. The fund shall consist of proceeds from the fees imposed pursuant to the Waste Reduction and Recycling Incentive Act.

(2) The fund may be used for purposes which include, but are not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs;

(h) Incentive grants to political subdivisions to assist and encourage the closure of landfills operating without a permit, the regional consolidation of solid waste disposal facilities operating with a permit, and the use of transfer stations. Grants awarded for programs involving land disposal shall include provisions for waste reduction and recycling; and

(i) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate waste to generate and recover energy resources, except that no disbursements shall be made under this section for scrap tire processing related to tire-derived fuel.

(3) No grant shall be made under section 81-15,161 to a political subdivision which operates a landfill operating without a permit unless the grant will be used to meet permit standards and the landfill is issued a permit within two years after the award of the grant.

(4) ~~Priority for grants made under section 81-15,161 shall be given to grant proposals that will be used for the recycling of tires or tire waste reduction, except that on or before June 1, 2002, up to one million dollars will be available for scrap tire projects only, if acceptable scrap tire project applications are received~~ Grants up to one million dollars annually shall be available until June 1, 2004, for new scrap tire projects only, if acceptable scrap tire project applications are received. Eligible categories of disbursement under section 81-15,161 may include, but are not limited to:

(a) ~~Studies to determine economic and technical feasibility of uses of scrap tires or tire-derived product, with disbursements of up to one hundred percent of the cost of the study;~~

~~(b)~~ Reimbursement for the purchase of crumb rubber generated and used in Nebraska, with disbursements not to exceed fifty percent of the cost of the crumb rubber;

~~(c)~~ (b) Reimbursement for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content, with disbursements not to exceed twenty-five percent of the product's retail cost, except that persons who applied for a grant between June 1, 1999, and the effective date of this act for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content may apply for reimbursement on or before July 1, 2002. Reimbursement shall not exceed twenty-five percent of the product's retail cost and may be funded in fiscal years 2001-02 and 2002-03;

~~(d)~~ (c) Participation in the capital costs of building, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived product, with disbursements not to exceed fifty percent of such costs or five hundred thousand dollars, whichever is less;

~~(e)~~ (d) Participation in the capital costs of building, equipment, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not to exceed fifty percent of such costs;

~~(f)~~ (e) Cost-sharing for the manufacturing of tire-derived product, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

~~(g)~~ (f) Cost-sharing for the processing of scrap tires, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; ~~and~~

~~(h)~~ (g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; and

(h) Disbursement to a political subdivision up to one hundred percent of costs incurred in cleaning up scrap tire collection sites.

The director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

(5) ~~The department may disburse (a) to any person up to one hundred percent of the costs incurred in cleaning up scrap tire collection sites existing on June 11, 1997, if application for such cleanup is submitted prior to June 1, 1999, and the cleanup is completed by September 1, 2000, or (b) to a political subdivision up to one hundred percent of costs incurred in cleaning up collection sites if application for such cleanup is submitted prior to June 1, 1999, and the cleanup is completed by September 1, 2000.~~

~~(6)~~ Priority for grants made under section 81-15,161 shall be given to grant proposals demonstrating a formal public/private partnership except for grants awarded from fees collected under subsection (6) of section 13-2042.

~~(7)~~ (6) Grants awarded from fees collected under subsection (6) of section 13-2042 may be renewed for up to a five-year grant period. Such applications shall include an updated integrated solid waste management plan pursuant to section 13-2032. Annual disbursements are subject to available funds and the grantee meeting established grant conditions. Priority for such grants shall be given to grant proposals showing regional participation and programs which address the first integrated solid waste management hierarchy as stated in section 13-2018 which shall include toxicity reduction. Disbursements for any one year shall not exceed fifty percent of the total fees collected after rebates under subsection (6) of section 13-2042 during that year.

~~(8)~~ (7) Any person who operates a scrap tire collection site in violation of state law which is the subject of abatement or cleanup ~~as provided in section 81-15,161.01~~ shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid ~~out of the fund~~ by the Department of Environmental Quality.

~~(9)~~ (8) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 17. Original sections 66-1516, 81-1505.04, 81-15,117, 81-15,119, 81-15,120, and 81-15,160, Reissue Revised Statutes of Nebraska, and sections 66-1518, 66-1519, 66-1523, 66-1525, 66-1529.02, and 81-1532, Revised Statutes Supplement, 2000, are repealed.

Sec. 18. Since an emergency exists, this act takes effect when passed and approved according to law.