

LEGISLATIVE BILL 1029

Approved by the Governor April 13, 1974

Introduced by Agriculture and Environment Committee, Schmit, 23, Chmn.; Rasmussen, 41; Dickinson, 31; C. Carsten, 2; Kime, 43; Kennedy, 21; Epke, 24

AN ACT to amend section 81-1526, Reissue Revised Statutes of Nebraska, 1943, sections 81-1503, 81-1506, 81-1507, 81-1509, 81-1513, and 81-1527, Revised Statutes Supplement, 1972, and sections 81-1504 and 81-1505, Revised Statutes Supplement, 1973, relating to the Environmental Protection Act; to clarify responsibilities of the Environmental Control Council and the Director of Environmental Control; to change provisions as to variances, trade secrets, and effluent data; to provide guidelines for adoption of standards, rules and regulations; to repeal the original sections, and also sections 81-1521 and 81-1531, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 81-1503, Revised Statutes Supplement, 1972, be amended to read as follows:

81-1503. (1) The Environmental Control Council is hereby created. The council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows: One representative of the food products manufacturing industry, one representative of conservation, one representative of the agricultural processing industry, one representative of the automotive or petroleum industry, one representative of the chemical industry, one representative of heavy industry, one representative of the power generating industry, one representative of agriculture actively engaged in crop production, one representative of labor, one professional engineer experienced in control of air and water pollution and solid wastes, one physician knowledgeable in the health aspects of air, water and land pollution, one representative from county government, two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class, one representative of the livestock industry, and one representative of the public at large.

(2) Within thirty days after May 20, 1971, the Governor shall appoint the initial sixteen members to be appointed by him. Members shall serve for terms of four years, except that of the members first appointed, eight shall be appointed for terms of two years and eight shall be appointed for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made, and shall be subject to reconfirmation by the Legislature after the appointee has served for two years. If the Legislature fails to reconfirm a member, the Governor shall appoint a successor for the balance of the term. As the terms of the initial appointees to the council expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors shall be appointed to four-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed. All members shall be citizens and residents of the State of Nebraska.

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

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

(5) The members of the council, while engaged in the performance of their official duties, shall receive compensation at the rate of forty dollars per day while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses on the same basis and subject to the same conditions as full-time state employees.

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

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

(8) Before the director shall enter upon the duties of his office, he shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear and affirm that he holds no other public office nor any position under any political committee or party and that he has not during the two years immediately prior to his appointment received a significant portion of his income directly or indirectly from permit holders or applicants for a permit under the provisions of sections 81-1501 to 81-1532 and that he will not receive such income during his term as director. Such oath and affirmation shall be filed with the Secretary of State.

~~(9) The department shall employ, compensate, and prescribe the powers and duties of such officers, employees, and consultants, in accordance with the laws of this state, as may be necessary to carry out the provisions of sections 81-1501 to 81-1532.~~



~~(10) The Governor's Keep Nebraska Beautiful Committee may be employed by the department for such special occasions and projects as the department may decide. Reimbursement of the Keep Nebraska Beautiful Committee shall be made from state and appropriate federal matching funds for each assignment of work by the department.~~

~~(11) The department is hereby designated as the state air pollution and water pollution control agency for this state for all purposes of the federal Air Quality Act of 1967 and the federal Water Pollution Control Act, as amended (33 United States Code 466), and for the administration of all federal and state grants and incentives for environmental protection, and it is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of these acts.~~

Sec. 2. That section 81-1504, Revised Statutes Supplement, 1973, be amended to read as follows:

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 provisions of sections 81-1501 to 81-1532 and all rules and regulations and orders promulgated thereunder;

(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, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of sections 81-1501 to 81-1532;

~~(4) To accept and administer loans and grants from the federal government act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816, the Clean Air Act, as amended, 42 U.S.C. 1857 et seq., the Solid Waste Disposal Act, as amended, 42 U.S.C. 3251 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 thereof as it may deem advisable and necessary for the discharge of its duties under sections 81-1501 to 81-1532, using its own staff or by using 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 thereof;

(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 of or the adoption of other remedial measures to prevent, control or abate pollution; ~~and (c) setting standards of air, land, and water quality or evidencing any other determination by the council under the provisions of sections 81-1501 to 81-1532;~~

(8) To administer state grants to political subdivisions 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 ~~council by resolution thereof~~ director deems necessary, and any of these powers may be exercised on behalf of the ~~council~~ director by a hearing officer designated by ~~resolution~~ him;

(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 sections 81-1501 to 81-1532;

(11) To issue, continue in effect, revoke, modify or deny permits, under such conditions as the director may prescribe, consistent with the standards, rules and regulations adopted by the council, to prevent, control or abate pollution, or for the discharge of wastes into the air, land, or waters of the state, and 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 sections 81-1501 to 81-1532;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, and solid wastes, to be administered by full-time salaried bureau, division or section chiefs, and to delegate and assign to each such bureau, division, or section and the officers and employees therein, the duties and powers granted to the department for the enforcement of the provisions of Chapter 81, article 15, and the standards, rules and regulations adopted pursuant thereto;

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

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

(17) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of sections 81-1501 to 81-1532;

(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, upon the request of any person proposing to construct, install or otherwise acquire an air, land, or water contaminant source or device or system for control thereof, with such person concerning the efficacy of such device or system, or 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 sections 81-1501 to 81-1532, rules and regulations in force pursuant thereto, 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 sections 81-1501 to 81-1532;

(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; Provided, prosecutions commenced under such contracts are conducted by the Attorney General or county attorneys as provided in sections 81-1501 to 81-1532;

(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; ~~and~~

(25) To develop and enforce compliance schedules under such conditions as the director may prescribe, consistent with the standards, rules, and regulations adopted by the council, to prevent, control, or abate pollution; Provided, that the council shall adopt no rules or regulations which are less stringent than those requirements defined by federal guidelines; ~~and~~

(26) To employ the Governor's Keep Nebraska Beautiful Committee for such special occasions and projects as the department may decide and reimbursement of the committee shall be made from state and appropriate federal matching funds for each assignment of work by the department.

Sec. 3. That section 81-1505, Revised Statutes Supplement, 1973, be amended to read as follows:

81-1505. (1) In order to carry out the purposes of sections 81-1501 to 81-1532, the council shall adopt rules and regulations which shall set standards of air, water and land quality to be applicable to the air, waters and land of this state or portions thereof. Such standards of quality shall be such as to protect the

public health and welfare, and---the---present---and prospective future use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. The council shall classify air, water and land contaminant sources according to levels and types of discharges, emissions and other characteristics which relate to air, water and land pollution, and may require reporting for any such class or classes. Such classifications and standards made pursuant to this subsection section may be made for application to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Such standards and classifications may be amended as determined necessary by the council.

(2) In adopting the classifications of waters and water quality standards, the primary purpose for such standards shall be to protect the public health and welfare, and the council shall give consideration to: (a) The size, depth, surface or underground area covered, the volume, direction and rate of flow, stream gradient, and temperature of the water; (b) the character of the area affected by such classification or standards, its peculiar suitability for particular purposes, conserving the value of the area, and encouraging the most appropriate use of lands within such area for domestic, agricultural, industrial, or recreational and aquatic life purposes; (c) the uses which have been made, are being made, or are likely to be made, of such waters for agricultural, transportation, domestic and industrial consumption, for fishing and aquatic culture, for the disposal of sewage, industrial waste and other wastes, or other uses within this state and, at the discretion of the council, any such uses in another state on interstate waters flowing through or originating in this state; and (d) the extent of present pollution or contamination of such waters which has already occurred or resulted from past discharges therein.

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



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

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

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

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

(8) In adopting regulations pertaining to the disposal of domestic and industrial liquid wastes the council shall give consideration to the minimum amount of biochemical oxygen demand, suspended solids, or equivalent in the case of industrial wastewaters, which must be removed from the wastewaters, the degree of disinfection necessary to meet water quality standards, the requirements of section 81-1506 (2) (c) and (3) with respect to installation, change, alterations in or additions to any wastewater treatment works, and requirements necessary for proper maintenance thereof.

(9) In adopting regulations to control the erection, modification, commencement, alteration, or operation of disposal wells to protect groundwater and other subsurface resources of the state, the council shall give consideration to the effects on water quality of groundwater, general conditions such as location, geologic formations, topography, industry, agriculture,

population densities, wildlife, fish and other aquatic life, mineral and water resources, an evaluation of generalized geologic and hydrologic conditions, design specifications of the proposed well, the disposal system, an evaluation of the injection zone, specifications for surface equipment design and conditions under which abandonment of such a well will be allowed.

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

(11) In adopting regulations for the issuance of permits under the National Pollutant Discharge Elimination System created by the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, the council shall consider when such permits shall be required and exemptions, application and filing requirements, terms and conditions affecting such permits, notice and public participation, duration and review of such permits, and monitoring, recording, and reporting under the system.

(12) In adopting air pollution control regulations the council shall consider classification of air quality control regions, reporting of emissions, when permits shall be required for new and complex sources, limitations on emissions from existing process operations and existing fuel-burning equipment, incinerator emissions, and such other emissions restrictions as are necessary to protect the public health and welfare, when exceptions will be allowed, establishment of time schedules for compliance, measurement of emissions, and provision for emergency air episodes.

(13) In adopting regulations for solid waste disposal, the council shall consider storage, collection, transportation, processing, resource recovery, and disposal of solid wastes, development and operational plans for solid waste disposal areas, conditions for licensing of solid waste disposal areas, modification, suspension, or revocation of such licenses, regulations of operations thereof, including site improvements, fire prevention, safety, and restricted access, spreading, compacting and covering of solid wastes, handling of liquids and hazardous materials, insect and rodent control, salvage operations, and the methods of disposing



of accumulations of junk outside of solid waste disposal areas.

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

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

(16) Prior to adopting, amending, or repealing standards and classifications of air, water and land quality, the council shall, after due notice, conduct public hearings thereon. Notice of public hearings shall specify the waters or the area of the state for which standards of air, water or land are sought to be adopted, amended or repealed and the time, date and place of such hearing. Such hearing shall be held in the general area to be affected by such standards. Copies of such notice shall be:

(a) Published at least twice in a newspaper regularly published or circulated in a county or counties bordering or through which flow the waters or the atmosphere of which is affected, or the particular portion of land which is affected, for which standards are sought to be adopted. The first date of publication shall not be more than thirty days nor less than twenty days before the date fixed for such hearing; and

(b) Mailed at least twenty days before such hearing to such persons and political subdivisions as the council has reason to believe may be affected by the proposed standards.

(17) Standards of quality of the air, waters or land of the state or any amendment or repeal thereof shall become effective upon adoption by the council and filing in the office of the Secretary of State. In



adopting standards of air, water and land quality or making any amendment thereof, the council shall specify a reasonable time for persons discharging wastes into the air, waters or land of the state to comply with such standards and upon the expiration of any such period of time ~~shall~~ may revoke or modify any permit previously issued which authorizes the discharge of wastes into the air, waters or land of this state which result in reducing the quality of such air, waters or land below the standards established therefor by the council.

~~(5)~~ (18) All standards of quality of air, waters or land and all rules and regulations adopted pursuant to law by the council prior to ~~May-26,--1971~~ the effective date of this act and applicable to specified air, waters or land are hereby approved and adopted as standards of quality of and rules and regulations for such air, waters or land.

~~(6)~~ (19) In addition to such standards as are heretofore authorized, the council shall adopt rules and regulations to set standards of performance, effluent standards, pretreatment standards, treatment standards, toxic pollutant standards and limitations, effluent limitations, effluent prohibitions, and quantitative limitations or concentrations which shall in all respects conform with and meet the requirements of the National Pollutant Discharge Elimination System in the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

Sec. 4. That section 81-1506, Revised Statutes Supplement, 1972, be amended to read as follows:

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

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

(b) To discharge or emit any wastes into any air, waters or land of the state which reduce the quality of such air, waters or land below the air, water or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance.

(2) It shall be unlawful for any person to carry on any of the following activities unless he holds a current permit therefor from the department, as is required by it, for the disposal of all wastes which are

or may be discharged or emitted thereby into the air, waters or land of the state:

(a) Discharges for which a permit is required under the National Pollutant Discharge Elimination System created by the Federal Water Pollution Control Act Amendments of 1972 in which case the issuance of such permits shall be according to rules and regulations adopted by the council pursuant to subsection (1) of section 81-1505 and to which other provisions of this section shall not apply;

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

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

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

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

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

(3) If within thirty days of the receipt of plans, specifications or other information required pursuant to this section the department determines that the proposed construction, installation or establishment will not be in accordance with the requirements of sections 81-1501 to 81-1532 or applicable rules and regulations, it shall issue a preliminary order

prohibiting the construction, installation or establishment of the air, water or land contaminant source or sources. Failure of such an order to issue within the time prescribed in this subsection shall be deemed a determination that the construction, installation or establishment may proceed, if it is in accordance with the plans, specifications or other information, if any, required to be submitted.

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

(5) Nothing in this section shall be construed to authorize the department to specify the type, design, method of installation or type of construction of any equipment of manufacturing processes, or the kind or composition of fuels permitted to be sold, stored or used.

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

Sec. 5. That section 81-1507, Revised Statutes Supplement, 1972, be amended to read as follows:

81-1507. (1) Whenever the director has reason to believe that a violation of any provision of sections 81-1501 to 81-1532 or regulation or of any order of the department has occurred he may cause a written complaint to be served upon the alleged violator or violators. The complaint shall specify the provision of sections 81-1501 to 81-1532 or regulation or order alleged to be violated and the facts alleged to constitute a violation thereof, and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall become final unless each person named therein requests in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the alleged violator appear before the director at a time and place specified in the notice and



answer the charges complained of. The notice shall be delivered to the alleged violator or violators in accordance with the provisions of subsection (5) of this section not less than thirty days before the time set for the hearing.

(2) The director shall afford an opportunity for a fair hearing, in accordance with the provisions of sections 81-1501 to 81-1532, to the alleged violator or violators at the time and place specified in the notice or any modification thereof. On the basis of the evidence produced at the hearing the director or hearing officer shall make findings of fact and conclusions of law and enter such order as in his opinion will best further the purposes of sections 81-1501 to 81-1532 and shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the director, such person shall transmit a record of the hearing together with findings of fact and conclusions of law to the director. The director, prior to entering his order on the basis of such record, shall provide opportunity to the parties to submit for his consideration exceptions to the findings or conclusions and supporting reasons for such exceptions. The order of the director shall become final and binding on all parties unless appealed to the courts as provided in sections 81-1501 to 81-1532 within thirty days after notice has been sent to the parties.

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

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

affected person. On the basis of such hearing the director shall continue such order in effect, revoke it or modify it.

(5) Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director may be served on any person affected thereby personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the department; or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail, directed to the person affected at his last-known post office address as shown by the files or records of the department, and proof thereof may be made by the affidavit of the person who did the mailing, filed in the office of the department.

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

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

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

Sec. 6. That section 81-1509, Revised Statutes Supplement, 1972, be amended to read as follows:

81-1509. (1) An appeal may be taken from any final order or other final determination of the director, by any person who is or may be adversely affected thereby, or by the Attorney General on behalf of the State of Nebraska, to the district court of Lancaster County. Within thirty days after receipt of a copy of the order, or other final determination, or after service of notice thereof by certified or registered mail, the appellant or his attorney shall serve a notice of appeal on the agency through its ~~executive--secretary~~ director. During such thirty-day period the court may for good cause shown extend such time for not exceeding an additional sixty days. The notice of appeal shall refer to the action of the director appealed from and shall specify the grounds of appeal, including both points of law and fact which are asserted or questioned by the appellant. A copy of the original notice of appeal with proof of service shall be filed by the appellant or his attorney with the clerk of the court within ten days of the service of the notice and thereupon the court shall have jurisdiction of the appeal. The service of such notice of appeal shall not act as a stay of enforcement of the director's final order or other final determination unless so ordered and directed by the court.

(2) The appellant and the director shall in all cases be deemed the original parties to an appeal. The state, through the Attorney General or any other person affected, may become a party by intervention as in a civil action upon showing cause therefor in cases where the original action involved parties other than the director. No bond or deposit for costs shall be required of the state or department upon any such appeal or upon any subsequent appeal to the Supreme Court or other court proceedings pertaining to the matter.

(3) The appeal shall be heard and determined by the court upon the issues raised by the notice of appeal and the answer thereto according to the rules related to a trial in the nature of an appeal in equity of an administrative determination. All findings of fact by the director are to be deemed final, unless it is shown that such findings were not supported by substantial evidence produced before the director at the hearing. In any appeal or other proceeding involving any order, or other determination of the director, the action of the director shall be prima facie reasonable and valid and it shall be presumed that all requirements of the law pertaining to the taking thereof have been complied with.



A certified copy of the proceedings, together with all documents and papers on file and all testimony taken therein shall be certified to the district court in connection with each appeal. The certified copies of the director's findings and decisions shall be deemed its answer to the notice of appeal.

(4) The trial of the appeal before the district court shall be without a jury and shall be de novo. The court shall receive in evidence in any such case a certified transcript of the proceedings had before the director, together with a certified copy of the director's findings and decision, which findings and decision shall be evidence of the facts found therein and may receive such further evidence as the court in its discretion deems proper and necessary and shall have jurisdiction to enter such judgment and orders enforcing such judgment as may be proper and necessary. The record of the director filed in court shall be returned to the director after the final disposition of the case by the district court or the Supreme Court.

(5) The director or any party who may consider himself aggrieved by the decision of the district court on appeal, may appeal such decision to the Supreme Court in the same manner as is provided in civil cases.

Sec. 7. That section 81-1513, Revised Statutes Supplement, 1972, be amended to read as follows:

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

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

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

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

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

(2) No variance shall be granted ~~pursuant to this section except after public hearing on due notice and~~ until the director has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

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

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

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

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

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the director on account of the variance, no renewal thereof shall be granted unless, ~~following public hearing on the complaint on due notice,~~ the director finds that renewal is

justified. No renewal shall be granted except on application therefor. Any such application shall be made at least thirty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal the director shall give public notice of such application in accordance with rules and regulations of the department.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the director. The granting or denial of a variance or a renewal shall be by final order of the director. Any person adversely affected by such an order may obtain judicial review thereof in accordance with the provisions of section 81-1509; Provided, that such review shall be limited to the issue of whether the director exercised his discretion in an arbitrary or capricious manner.

(6) Nothing in this section and no variance or renewal granted pursuant to this section shall be construed to prevent or limit the application of the emergency provisions and procedures of section ~~81-1542~~ 81-1507 to any person or his property.

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

Sec. 8. That section 81-1526, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

81-1526. (1) All rules and regulations adopted by the director council and all hearings and other proceedings of the director, and judicial review thereof, shall be subject to the provisions of Chapter 84, article 9.

(2) Nothing in this section shall be construed to require a hearing prior to the issuance of an emergency order pursuant to section ~~81-1542~~ 81-1507.

(3) Nothing in Chapter 84, article 9, shall be construed to render inapplicable or unenforceable the procedure set forth in section 81-1507. In any case of inconsistency or conflict, the provisions of section 81-1507 shall prevail.

Sec. 9. That section 81-1527, Revised Statutes Supplement, 1972, be amended to read as follows:



81-1527. Any records or other information furnished to or obtained by the department concerning one or more air, water or land contaminant sources, which records or information, as certified by the owner or operator, ~~relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely the competitive position of such owner or operator and determined by the director to relate to methods or processes entitled to protection as trade secrets of such owner or operator,~~ shall be only for the confidential use of the department in the administration of sections 81-1501 to 81-1532, unless such owner or operator shall expressly agree to their publication or availability to the general public; Provided, that emission data obtained under the federal Clean Air Act of 1970, 42 U.S.C. 1857 et seq., or effluent data, permit applications, draft permits, or permits as issued, all under the National Pollutant Discharge Elimination System, pursuant to the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, shall be available to the public during business hours, and any information to be accorded confidential status in a national pollutant discharge elimination system form shall be forwarded to the Regional Administrator of the Environmental Protection Agency for concurrence with the director's determination of such status. Nothing in this section shall be construed to prevent the use of such records or information by the department in compiling or publishing analyses or summaries relating to the general condition of water or the land or the outdoor atmosphere; Provided, that such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

Sec. 10. That original section 81-1526, Reissue Revised Statutes of Nebraska, 1943, sections 81-1503, 81-1506, 81-1507, 81-1509, 81-1513, and 81-1527, Revised Statutes Supplement, 1972, and sections 81-1504 and 81-1505, Revised Statutes Supplement, 1973, and also sections 81-1521 and 81-1531, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.