

## LEGISLATIVE BILL 284

Approved by the Governor April 14, 1986

Introduced by Public Works Committee, Schmit, 23,  
Chairperson; DeCamp, 40; Beyer, 3;  
Lynch, 13; Lamb, 43; Smith, 33; Nelson, 35;  
R. Johnson, 34

AN ACT relating to relating to irrigation; to amend section 46-612.01, Reissue Revised Statutes of Nebraska, 1943; to adopt the Nebraska Chemigation Act; to provide penalties; and to repeal the original section.

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

Section 1. This act shall be known and may be cited as the Nebraska Chemigation Act.

Sec. 2. The Legislature finds that the use of chemigation throughout the state is increasing and that, although chemigation provides a viable alternative to other means of chemical application, if an irrigation distribution system is not properly equipped or if a chemical is not used with proper precautions, there exists a potential to contaminate the water.

The Legislature also finds that complete information as to the occurrences and use of chemigation in this state is essential to the development of a sound state water management policy.

For these reasons, the Legislature deems it necessary to provide the natural resources districts and the Department of Environmental Control with the authority to document, monitor, regulate, and enforce chemigation practices in Nebraska.

Sec. 3. For purposes of the Nebraska Chemigation Act, unless the context otherwise requires, the definitions found in sections 4 to 16 of this act shall apply.

Sec. 4. Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.

Sec. 5. Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.

Sec. 6. Chemigation shall mean any process whereby chemicals are applied to land or crops in or

with water through an onfarm irrigation distribution system.

Sec. 7. Council shall mean the Environmental Control Council.

Sec. 8. Department shall mean the Department of Environmental Control.

Sec. 9. Director shall mean the Director of Environmental Control.

Sec. 10. District shall mean a natural resources district created pursuant to Chapter 2, article 32.

Sec. 11. Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.

Sec. 12. Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.

Sec. 13. Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

Sec. 14. Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.

Sec. 15. Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

Sec. 16. Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator.

defoliant, or desiccant.

Sec. 17. After January 1, 1987, no person shall apply or authorize the application of chemicals to land or crops through the use of chemigation unless such person obtains a permit from the district in which the well or diversion is located, except that nothing in this section shall require a person to obtain a chemigation permit to pump or divert water to or through an open discharge system. After such date any person who intends to engage in chemigation shall, before commencing, file with the district an application for a chemigation permit for each injection location on forms provided by the department. Forms shall be made available by the department to each district office and at such other places as may be deemed appropriate. Except as provided in sections 18 and 19 of this act, the district shall review each application, conduct an inspection, and approve or deny the application within forty-five days after the application is filed. An application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 27 of this act and the applicator has been certified as a chemigation applicator under sections 28 and 29 of this act. A copy of each approved application shall immediately be forwarded by the district to the department. This section shall not be construed to prevent the use of portable chemigation equipment if such equipment meets the requirements of section 27 of this act.

Sec. 18. For the period commencing on January 1, 1987, through September 30, 1987, a provisional permit may be issued by the district prior to conducting an inspection if the work demands on the district do not permit an inspection to be made within forty-five days after an application is filed or if the applicator does not have sufficient time to meet the certification requirements of sections 28 and 29 of this act. Each district shall, on or before January 1, 1988, complete an inspection of each irrigation distribution system for which a provisional permit has been issued. Provisional permits shall be revoked without a hearing if the inspection shows that the irrigation distribution system does not comply with the equipment requirements of section 27 of this act or if the applicator has not met the certification requirements of sections 28 and 29 of this act on or before January 1, 1988. Commencing October 1, 1987, no permit shall be issued by the district until an inspection has been completed and the

irrigation distribution system is found to be in compliance with the requirements of section 27 of this act and the applicator has been certified under sections 28 and 29 of this act.

Sec. 19. (1) A person may file an application with the district for an emergency permit on forms provided by the district. The district shall review each emergency application and approve or deny the application within forty-eight hours after the application is filed. An emergency application shall be approved and a permit issued by the district if the irrigation distribution system complies with the equipment requirements of section 27 of this act and the applicator has been certified under sections 28 and 29 of this act. If the district has not denied an emergency permit within forty-eight hours, it shall be deemed approved. Such permit shall be valid for a period of forty-five days from the date of issuance.

(2) The application for an emergency permit shall be accompanied by a fee of one hundred dollars payable to the district. Ninety dollars of the fee shall be retained by the district, and ten dollars shall be paid by the district to the department. The application shall contain the same information as required in section 20 of this act.

(3) Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of this section shall have such permit automatically revoked without a hearing and shall be guilty of a Class II misdemeanor.

Sec. 20. Each application to engage in chemigation shall contain (1) the name and post office address of the applicant, (2) the location by legal description of the land where chemigation is to be used, and (3) such other information as the department, after consultation with the district, may deem necessary.

Sec. 21. (1) The fee for initial application for a permit shall be thirty dollars payable to the district. Twenty-five dollars of the fee shall be retained by the district and five dollars paid by the district to the department.

After January 1, 1988, the annual fee for renewal of a permit shall be ten dollars paid to the district. Two dollars of the annual fee shall be paid by the district to the department.

All fees shall be used by the district and the department to administer the Nebraska Chemigation Act. The department's fee shall be deposited in the Chemigation Costs Fund which is hereby created. All

fees collected by the department pursuant to the act shall be paid into the state treasury and credited by the State Treasurer to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

(2) All permits issued pursuant to section 17 of this act shall be annual permits and shall expire on December 31 of the year for which the permit was issued. A permit may be renewed each year upon payment of the annual renewal fee and completion of a form provided by the district which lists the names of all chemicals used in chemigation the previous year. Once a permit has expired, it shall not be reinstated without meeting all of the requirements for a new permit including an inspection and payment of the initial application fee.

Sec. 22. Any permit holder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the district shall notify the district within seventy-two hours of such replacement or alteration. The district shall conduct an inspection of the replaced or altered equipment and shall approve the continuance of chemigation if the replaced or altered equipment remains in compliance with the requirements of section 27 of this act. No additional permit fee shall be collected by the district for inspecting a previously approved injection location.

Sec. 23. Annual reports shall be submitted to the department by the district personnel showing the actual number of applications received, the number of applications approved, the location of each permitted chemigation system in the district, the name of each permit holder utilizing chemigation in the district, the number of inspections made, and the name of all chemicals used in chemigation systems within the district during the previous year.

Sec. 24. Each district shall conduct areawide, selective, and periodic inspections to insure compliance with the Nebraska Chemigation Act. Employees of the district and the department shall have access at all reasonable times to inspect such system and to otherwise carry out their duties under the act. Such employees may apply to the district or county court of the county in which the irrigation distribution system is located for an inspection warrant to require a permit holder to allow the employees to enter onto his or her land to carry out their duties under the act. Entry upon any property pursuant to such act shall not be

considered to be legal trespass and no damage shall be recoverable on that account alone. Damage to crops caused by the issuance of any order authorized by the act shall not be recoverable on that account alone.

Sec. 25. The district shall deny, refuse renewal of, suspend, or revoke a permit applied for or issued pursuant to section 17 or 18 of this act on any of the following grounds:

(1) Practice of fraud or deceit in obtaining a permit; or

(2) Violation of any of the provisions of the Nebraska Chemigation Act or any standards or rules and regulations adopted and promulgated pursuant to such act.

Sec. 26. (1) Before a district denies, refuses renewal of, suspends, or revokes a permit, it shall send to the applicant or permit holder a notice setting forth the specific reasons for the proposed action. The denial, refusal of renewal, suspension, or revocation shall become final ten calendar days after mailing of the notice unless such person, within such ten-day period, gives written notice of a request for a hearing. If such a request is made, the applicant or permit holder shall be given an opportunity for a hearing before the board of directors of the district and shall have the right to present evidence on his or her own behalf. On the basis of the evidence presented, the proposed action shall be affirmed or set aside. A copy of such decision setting forth the findings of fact and the specific reasons upon which it is based shall be sent to the applicant or permit holder.

(2) In cases in which the district or department concludes that there is an actual or imminent threat of danger to persons or the environment by the operation of a chemigation system, the district or department shall immediately suspend the operation of the system. Any aggrieved permit holder or applicator may, within ten days of receipt of an order of suspension pursuant to this section, request a hearing on such order. The hearing shall be held within ten days of receipt of the request. The district or department shall give notice of the hearing by certified or registered mail to the permit holder or applicator. The district or department shall issue an order within ten days after the hearing.

If the district or department concludes that the suspension should be continued, the district or department may, if necessary, apply for a restraining order or a temporary or permanent injunction against the

permitholder or applicator pursuant to the procedure prescribed by section 38 of this act.

Sec. 27. That section 46-612.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-612-01- (1) Any person who shall place or permit any fertilizer material as defined in section 81-27162-02 or pesticide chemical as defined in section 81-217-12, places any chemical in an irrigation distribution system or permits any chemical to be in an irrigation distribution system without a mechanical device on the well pump having a properly operating (a) check and vacuum relief valve in the irrigation pipe, (b) inspection port or other device to check the performance of the check valve on the irrigation pipeline, (c) automatic low-pressure drain placed between the main check valve and the irrigation pump so that a solution will drain away from the source of water supply, (d) check valve in the chemical injection line, and (e) simultaneous interlock device between the power system of the chemical injection unit and the irrigation pumping plant to protect the underground water supply from contamination in the event such well pump pumping plant ceases to operate or such other properly operating additional or replacement equipment as may be specified by the council pursuant to subsection (3) of this section shall be guilty of a Class IV misdemeanor.

(2) On or before October 1, 1986, the council shall adopt and promulgate rules and regulations specifying the standards for the equipment required pursuant to this section as are necessary to prevent the contamination of the water supply. The standards specified in such rules and regulations shall not be such as to impose an unduly severe or costly burden on any person without substantially contributing to the prevention of water contamination.

(3) The council may adopt and promulgate rules and regulations specifying equipment other than that required in subsection (1) of this section if changes in design, technology, or irrigation practices or other similar reasons warrant the use of equipment in addition to or in lieu of that enumerated in this section. Any equipment specified pursuant to this subsection shall provide protection to the water supply at least equal to that provided by the equipment required in subsection (1) of this section. The districts shall be given forty-five days to review and comment on rules and regulations proposed by the council prior to the hearing by the council.

Sec. 28. In order to insure that applicators of chemicals have sufficient scientific and practical knowledge in the use of chemigation, the director shall conduct training sessions directed toward thorough comprehension and knowledge of the safe use of chemigation or contract with the Cooperative Extension Service of the University of Nebraska to conduct such training sessions through its county extension agents and specialists in the state. If the department contracts for the training sessions, the Cooperative Extension Service shall be reimbursed for conducting the training sessions. The director shall issue a certificate acknowledging the satisfactory demonstration of competency to be determined by the director through the use of a written examination prepared and administered by the department. Each applicator's certificate shall expire two years after the date of issuance and shall be renewed upon the satisfactory completion of training.

Sec. 29. The council shall prescribe the necessary forms and adopt and promulgate such rules and regulations as shall be necessary to carry out the provisions of section 28 of this act regarding the conducting of training sessions and the issuing of certificates.

Sec. 30. Signs shall be posted which provide notice that chemicals are applied in irrigation water in the field in areas being treated by means of chemigation with chemicals which appear on the restricted use list in the Federal Insecticide, Fungicide, and Rodenticide Act or chemicals for which labels require posting.

Sec. 31. The applicator or the permitholder shall report an actual or suspected accident related to the use of chemigation in his or her system to the department and the appropriate district within twenty-four hours of its discovery. Any accident resulting from the use of chemigation shall be investigated by the appropriate district and the department. In the event that the district or the department finds an adverse effect caused by such an accident, the department shall (1) determine the immediate danger presented by the accident, (2) take all steps necessary to assure immediate public safety, and (3) develop a plan of cleanup and recovery. The cleanup and recovery plan shall be carried out by the permitholder under the supervision of the department or the district.

Sec. 32. Any damage to the premises caused by the negligent or wrongful act or omission of any



employee of the district while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the Political Subdivisions Tort Claims Act. Any damage to the premises caused by the negligent or wrongful act or omission of any employee of the department while acting within the scope of his or her employment may be pursued as a tort claim as provided for in the State Tort Claims Act.

Sec. 33. Each district or the department may provide technical and other assistance as may be necessary or desirable to abate the risk of water contamination in the state caused by chemigation.

Sec. 34. The department shall have the power and duty:

(1) To advise, consult, cooperate, and contract with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, industries, and groups in furtherance of the purposes of the Nebraska Chemigation Act; and

(2) To receive or initiate complaints of water contamination, hold hearings in connection with water contamination, and institute legal proceedings in the name of the state for the control or prevention of water contamination.

Sec. 35. Each district may adopt and promulgate such rules and regulations as shall be necessary to carry out its responsibilities under the Nebraska Chemigation Act. The rules and regulations of a district shall be subject to approval by the director.

Sec. 36. The council shall adopt and promulgate rules and regulations providing for:

(1) Procedures and specifications for the installation, replacement, or repair of chemigation equipment;

(2) A system for the issuance of permits by the district to engage in chemigation;

(3) A procedure for a permit holder to follow when notifying the department and the appropriate district of any actual or suspected accident related to the use of chemigation;

(4) A procedure for the review and approval of a cleanup and recovery plan for an accident related to the use of chemigation;

(5) The posting of signs providing notice of the use of chemigation; and

(6) Any other chemigation practices necessary to carry out the Nebraska Chemigation Act.

Sec. 37. Compliance with the Nebraska

Chemigation Act shall be an affirmative defense to any civil action resulting from a person's use of chemigation.

Sec. 38. (1) Any person found by the district to be in violation of the Nebraska Chemigation Act or any rules and regulations issued pursuant to the act shall be notified by the district of such violation. Each person so notified by the district shall have ten days in which to comply. The district shall make every reasonable effort to obtain voluntary compliance. If after such ten-day period the violation has not been corrected, the district shall notify the department of the violation. The department shall make a preliminary investigation. If after such investigation the department determines that there is a violation of the act or rules and regulations, it shall revoke the person's chemigation permit until such time as there is satisfactory compliance.

(2) The district or department may apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against the person or persons violating or threatening to violate the Nebraska Chemigation Act or the rules and regulations adopted and promulgated under such act to the district court of the county where the violation is occurring or is about to occur. The court shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond.

(3) If the violation of the Nebraska Chemigation Act occurs with respect to an irrigation distribution system operated by a permitholder, a schedule for compliance may be established by the district in lieu of the ten-day compliance requirement.

(4) It shall be the duty of the Attorney General or the county attorney of the county in which such violation occurs or is about to occur, when notified of such violation or threatened violation, to cause appropriate proceedings under subsection (1) of this section to be instituted and pursued without delay.

Sec. 39. Any person who engages in chemigation without first obtaining a chemigation permit shall be (1) subject to a civil penalty of not more than one thousand dollars or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Sec. 40. Any person who engages in

Chemigation with a suspended or revoked chemigation permit shall be (1) subject to a civil penalty of not more than one thousand dollars or (2) guilty of a Class II misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Sec. 41. Any person who willfully tampers with or otherwise willfully damages in any way equipment meeting the requirements specified in section 27 of this act shall be (1) subject to a civil penalty of not more than one thousand dollars or (2) guilty of a Class I misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Sec. 42. Any permit holder who fails to notify the district and the department of any actual or suspected accident resulting from the use of chemigation shall be (1) subject to a civil penalty of not more than five hundred dollars or (2) guilty of a Class III misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Sec. 43. Any person who violates any of the provisions of the Nebraska Chemigation Act for which a specific penalty is not provided shall be (1) subject to a civil penalty of not more than five hundred dollars or (2) guilty of a Class IV misdemeanor. Each day of continued violation shall constitute a separate offense. The court may issue such injunctive orders as may be necessary to prohibit continued violations of the Nebraska Chemigation Act.

Sec. 44. If at any time after January 1, 1988, it is alleged by the department upon its own initiative or as a result of a complaint being filed with the department that a district is not carrying out its responsibilities under the Nebraska Chemigation Act, the department may hold a contested case hearing. Notice of such hearing shall be published in such newspapers as are necessary to provide for general circulation within the district at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall inform the public as to the reasons for such hearing. The director shall receive evidence from all interested parties at the hearing. Each hearing conducted pursuant to this section shall be recorded.

and such record shall be available for review.

Sec. 45. If after a hearing held pursuant to section 44 of this act the director determines that the district is not carrying out its responsibilities under the Nebraska Chemigation Act, the powers and duties of the district set out in the act shall vest in the department for a period of twelve months. All application fees shall be payable to the department during such twelve-month period and shall be placed in the Chemigation Costs Fund. Each district which has lost its powers and duties to the department shall, at least thirty days prior to the end of any such twelve-month period, inform the director as to whether it is now able to carry out its responsibilities under the Nebraska Chemigation Act or the reasons why it will continue to be unable to meet such responsibilities. If the district is unable to meet its responsibilities, the department may continue to perform the powers and duties required of the district for an additional twelve-month period.

Sec. 46. Any affected person aggrieved by any order issued or final decision made by the department pursuant to the Nebraska Chemigation Act may appeal in the manner provided by Chapter 84, article 9. The appeal from any final order of the district shall be taken to the district court of the county in which is located the land claimed to be adversely affected by the order or decision or, if such land is in two or more counties, the county in which the largest portion of such land lies. As used in this section, affected person shall mean an applicant for a permit which is subject to an order or final decision of the department or district and any owner of an estate or interest in or concerning land whose interest is or may be impacted in a direct or significant manner by the order or final decision of the department or district.

Sec. 47. Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of the department provided in Chapter 81, article 15.

Sec. 48. Nothing in the Nebraska Chemigation Act shall be construed to limit the powers of a district provided in the Nebraska Ground Water Management and Protection Act.

Sec. 49. That original section 46-612.01, Reissue Revised Statutes of Nebraska, 1943, is repealed.