**LB 1101 Advisory Committee**

**A Limited List of Statutes Relevant to the Duties**

**Of the Committee**

(As of January 1, 2015)

**Statutes Applicable to LB 1101 Scope of Study (Nebraska Environmental Protection Act and Selected Laws)**

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**Rules and Regulations Applicable to LB 1101 Scope of Study (Available on the Department’s website under Laws/Regs & EQC)**

Title 114 – Landfill Closure Assistance Fund (Repealed)

Title 126 – Rules and Regulations Pertaining to the Management of Wastes

Title 132 – Integrated Solid Waste Management Regulations

Title 133 – Litter Reduction and Recycling Grant Program

Title 136 – Scrap Tire Management Rules and Regulations (Repealed)

Title 199 – Waste Reduction and Recycling Incentive Grants Programs

Degradable Products Act

**69-2001. Act, how cited.**

Sections 69-2001 to 69-2012 shall be known and may be cited as the Degradable Products Act.

**Source:** Laws 1989, LB 325, § 1.

**69-2002. Definitions, where found.**

For purposes of the Degradable Products Act, the definitions found in sections 69-2003 to 69-2007 shall be used.

**Source:** Laws 1989, LB 325, § 2.

**69-2003. Biodegradable, defined.**

Biodegradable shall mean degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gases and organic compounds.

**Source:** Laws 1989, LB 325, § 3.

**69-2004. Degradable, defined.**

Degradable shall mean capable of decomposing or deteriorating through a natural chemical process into harmless components after exposure to natural elements for not more than one year.

**Source:** Laws 1989, LB 325, § 4.

**69-2005. Photodegradable, defined.**

Photodegradable shall mean degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

**Source:** Laws 1989, LB 325, § 5.

**69-2006. Recyclable, defined.**

Recyclable shall mean suitable for any process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering or reusing the resources contained therein.

**Source:** Laws 1989, LB 325, § 6.

**69-2007. Retail, defined.**

Retail shall mean sale for use or consumption and not for resale in any form.

**Source:** Laws 1989, LB 325, § 7.

**69-2008. Beverage container connectors; requirements.**

On and after January 1, 1991, a person shall not sell or offer for sale at retail any beverage for human consumption if the beverage container is connected to another beverage container by a device which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

**Source:** Laws 1989, LB 325, § 8; Laws 1992, LB 1257, § 72.

**69-2009. Garbage bags; requirements.**

On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for grass clippings, garbage, yard waste, or leaves which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

**Source:** Laws 1989, LB 325, § 9; Laws 1992, LB 1257, § 73.

**69-2010. Grocery or shopping bags; requirements.**

On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for groceries or shopping which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

**Source:** Laws 1989, LB 325, § 10.

**69-2011. Disposable diapers; requirements; Director of Environmental Quality; duties.**

On and after October 1, 1993, a person shall not sell or offer for sale at retail any disposable diaper which is constructed of a material which is not biodegradable or photodegradable if the Director of Environmental Quality determines that biodegradable or photodegradable disposable diapers are readily available at a comparable price and quality. The determination of quality shall include a study of the environmental impact and fate of such disposable diapers. The director shall issue his or her determination to the Legislature on or before October 1, 1992. For purposes of this section (1) readily available shall mean available for purchase in sufficient quantities to meet demand through usual retail channels throughout the state and (2) comparable price and quality shall mean at a cost not in excess of five percent above the average price for products of comparable quality which are not biodegradable or photodegradable.

**Source:** Laws 1989, LB 325, § 11; Laws 1993, LB 3, § 42.

**69-2012. Violations; penalty.**

Any person violating sections 69-2008 to 69-2011 shall be guilty of a Class III misdemeanor.

**Source:** Laws 1989, LB 325, § 12.

Environmental Protection Act

**81-1501. Department; declaration of legislative purpose.**

Whereas the water, land, and air of this state are among its most precious resources and the pollution thereof becomes a menace to the health and welfare of each person, and the public in general, in this state and whereas pollution of these resources in this state is likewise a concern in adjoining states, the public policy of this state is hereby declared to be:

(1) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses;

(2) To achieve and maintain such a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and enforce uniformly the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water, and land;

(3) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act; and

(4) To protect human health through environmental enforcement.

**Source:** Laws 1971, LB 939, § 1; Laws 1987, LB 152, § 1; Laws 1992, LB 1257, § 75; Laws 1994, LB 570, § 4; Laws 1998, LB 1209, § 17.

**Cross References**

* Integrated Solid Waste Management Act, see section 13-2001.
* Livestock Waste Management Act, see section 54-2416.

**81-1502. Terms, defined.**

For purposes of the Environmental Protection Act, unless the context otherwise requires:

(1) Air contaminant or air contamination shall mean the presence in the outdoor atmosphere of any dust, fume, mist, smoke, vapor, gas, other gaseous fluid, or particulate substance differing in composition from or exceeding in concentration the natural components of the atmosphere;

(2) Air pollution shall mean the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in such quantities and of such duration as are or may tend to be injurious to human, plant, or animal life, property, or the conduct of business;

(3) Chairperson shall mean the chairperson of the Environmental Quality Council and council shall mean the Environmental Quality Council;

(4) Complaint shall mean any charge, however informal, to or by the council, that any person or agency, private or public, is polluting the air, land, or water or is violating the Environmental Protection Act or any rule or regulation of the department in respect thereof;

(5) Control and controlling shall include prohibition and prohibiting as related to air, land, or water pollution;

(6) Department shall mean the Department of Environmental Quality, which department is hereby created;

(7) Director shall mean the Director of Environmental Quality, which position is hereby established;

(8) Disposal system shall mean a system for disposing of wastes, including hazardous wastes, either by surface or underground methods, and includes sewerage systems and treatment works, disposal wells and fields, and other systems;

(9) Emissions shall mean releases or discharges into the outdoor atmosphere of any air contaminant or combination thereof;

(10) Person shall mean any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity;

(11) Rule or regulation shall mean any rule or regulation of the department;

(12) Sewerage system shall mean pipelines, conduits, pumping stations, force mains, and all other constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(13) Treatment works shall mean any plant or other works used for the purpose of treating, stabilizing, or holding wastes;

(14) Wastes shall mean sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state;

(15) Refuse shall mean putrescible and nonputrescible solid wastes, except body wastes, and includes garbage, rubbish, ashes, incinerator ash, incinerator residue, street cleanings, and solid market and industrial wastes;

(16) Garbage shall mean rejected food wastes, including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables, and dead animals rejected by rendering plants;

(17) Rubbish shall mean nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, or litter of any kind that will be a detriment to the public health and safety;

(18) Junk shall mean old scrap, copper, brass, iron, steel, rope, rags, batteries, paper, trash, rubber debris, waste, dismantled or wrecked automobiles, or parts thereof, and other old or scrap ferrous or nonferrous material;

(19) Land pollution shall mean the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state;

(20) Water pollution shall mean the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water;

(21) Waters of the state shall mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state;

(22) Point source shall mean any discernible confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged;

(23) Effluent limitation shall mean any restriction, including a schedule of compliance, established by the council on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the state;

(24) Schedule of compliance shall mean a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard;

(25) Hazardous waste shall mean a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

(26) Solid waste shall mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities. Solid waste shall not include slag, a product that is a result of the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material; solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.;

(27) Storage, when used in connection with hazardous waste, shall mean the containment of hazardous waste, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous waste;

(28) Manifest shall mean the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage;

(29) Processing shall mean to treat, detoxify, neutralize, incinerate, biodegrade, or otherwise process a hazardous waste to remove such waste's harmful properties or characteristics for disposal in accordance with regulations established by the council;

(30) Well shall mean a bored, drilled, or driven shaft or a dug hole, the depth of which is greater than the largest surface dimension of such shaft or hole;

(31) Injection well shall mean a well into which fluids are injected;

(32) Fluid shall mean a material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or other form or state;

(33) Mineral production well shall mean a well drilled to promote extraction of mineral resources or energy, including, but not limited to, a well designed for (a) mining of sulfur by the Frasch process, (b) solution mining of sodium chloride, potash, phosphate, copper, uranium, or any other mineral which can be mined by this process, (c) in situ combustion of coal, tar sands, oil shale, or any other fossil fuel, or (d) recovery of geothermal energy for the production of electric power. Mineral production well shall not include any well designed for conventional oil or gas production, for use of fluids to promote enhanced recovery of oil or natural gas, or for injection of hydrocarbons for storage purposes;

(34) Mineral exploration hole shall mean a hole bored, drilled, driven, or dug in the act of exploring for a mineral other than oil and gas;

(35) Solution mining shall mean the use of an injection well and fluids to promote the extraction of mineral resources;

(36) Uranium shall mean tri-uranium oct-oxide;

(37) Solid waste management facility shall mean a facility as defined in section 13-2010; and

(38) Livestock waste control facility shall have the same meaning as in section 54-2417.

**Source:** Laws 1971, LB 939, § 2; Laws 1972, LB 1435, § 1; Laws 1973, LB 538, § 1; Laws 1980, LB 853, § 1; Laws 1981, LB 216, § 2; Laws 1983, LB 356, § 2; Laws 1984, LB 742, § 1; Laws 1984, LB 1078, § 1; Laws 1986, LB 1008, § 1; Laws 1992, LB 1257, § 76; Laws 1993, LB 121, § 538; Laws 1994, LB 570, § 5; Laws 1998, LB 1209, § 18; Laws 2004, LB 916, § 25; Laws 2013, LB203, § 1.

**81-1503. Environmental Quality Council; membership; appointment; compensation; Director of Environmental Quality; appointment; oath; duties.**

(1) (a) The Environmental Quality Council is hereby created.

(b) Until April 28, 2005, the council shall consist of sixteen members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(i) One representative of the food products manufacturing industry;

(ii) One representative of conservation;

(iii) One representative of the agricultural processing industry;

(iv) One representative of the automotive or petroleum industry;

(v) One representative of the chemical industry;

(vi) One representative of heavy industry;

(vii) One representative of the power generating industry;

(viii) One representative of agriculture actively engaged in crop production;

(ix) One representative of labor;

(x) One professional engineer experienced in control of air and water pollution and solid wastes;

(xi) One physician knowledgeable in the health aspects of air, water, and land pollution;

(xii) One representative from county government;

(xiii) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;

(xiv) One representative of the livestock industry; and

(xv) One representative of the public at large.

(c) On and after April 28, 2005, the council shall consist of seventeen members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(i) One representative of the food products manufacturing industry;

(ii) One representative of conservation;

(iii) One representative of the agricultural processing industry;

(iv) One representative of the automotive or petroleum industry;

(v) One representative of the chemical industry;

(vi) One representative of heavy industry;

(vii) One representative of the power generating industry;

(viii) One representative of agriculture actively engaged in crop production;

(ix) One representative of labor;

(x) One professional engineer experienced in control of air and water pollution and solid wastes;

(xi) One physician knowledgeable in the health aspects of air, water, and land pollution;

(xii) One representative from county government;

(xiii) Two representatives from municipal government, one of whom shall represent cities other than those of the primary or metropolitan class;

(xiv) One representative of the livestock industry;

(xv) One representative of minority populations; and

(xvi) One biologist.

(d)(i) Except as otherwise provided in this subdivision, members of the council serving on April 28, 2005, shall continue to serve on the council as representatives of the entity they were appointed to represent until their current terms of office expire and their successors are appointed and confirmed. The member representing the public at large shall serve until the member representing minority populations is appointed.

(ii) The Governor shall appoint members pursuant to subdivisions (1)(c)(xv) and (1)(c)(xvi) of this section within ninety days after April 28, 2005.

(2) Members shall serve for terms of four years. All appointments shall be subject to confirmation by the Legislature when initially made. As the term of an appointee to the council expires, the succeeding appointee shall be a representative of the same segment of the public as the previous appointee. In the case of appointees to vacancies occurring from unexpired terms, each successor shall serve out the term of his or her 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 or her an opportunity to be publicly heard in person or by counsel, in his or her 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 chairperson and a vice-chairperson, who shall hold office at the pleasure of the council. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson. The director shall serve as secretary of the council and shall keep all records of meetings of and actions taken by the council. He or she shall be promptly advised as to such actions by the chairperson.

(5) The members of the council, while engaged in the performance of their official duties, shall receive a per diem of forty dollars while so serving, including travel time. In addition, members of the council shall receive reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The council shall hold at least two regular meetings each year, 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 chairperson. Such special meetings must be called by him or her 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. A 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 or she shall appoint the Director of Environmental Quality who shall be experienced in air, water, and land pollution control and who may be otherwise an employee of 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, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act. 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, unless otherwise directed by statute. 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 enters upon the duties of his or her office, he or she shall take and subscribe to the constitutional oath of office and shall, in addition thereto, swear and affirm that he or she holds no other public office nor any position under any political committee or party, that he or she has not during the two years immediately prior to his or her appointment received a significant portion of his or her income directly or indirectly from permitholders or applicants for a permit under the Environmental Protection Act, and that he or she will not receive such income during his or her term as director, except that such requirements regarding income prior to the term of office shall not apply to employees of any agency of the State of Nebraska or any political subdivision which may be a permitholder under the Environmental Protection Act. Such oath and affirmation shall be filed with the Secretary of State.

**Source:** Laws 1971, LB 939, § 3; Laws 1972, LB 1435, § 2; Laws 1974, LB 1029, § 1; Laws 1979, LB 321, § 2; Laws 1981, LB 204, § 195; Laws 1983, LB 356, § 3; Laws 1992, LB 1257, § 77; Laws 1998, LB 1209, § 19; Laws 2005, LB 351, § 1; Laws 2012, LB760, § 1.

**Cross References**

* Integrated Solid Waste Management Act, see section 13-2001.
* Livestock Waste Management Act, see section 54-2416.

**81-1504. Department; powers; duties.**

The department shall have and may exercise the following powers and duties:

(1) To exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts;

(2) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the air, waters, and land of the state;

(3) To advise and consult, cooperate, and contract with other agencies of the state, the federal government, and other states, with interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of the acts;

(4) To act as the state water pollution, air pollution, and solid waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and any other federal legislation pertaining to loans or grants for environmental protection and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;

(5) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to air, land, and water pollution and causes and effects, prevention, control, and abatement of such pollution as it may deem advisable and necessary for the discharge of its duties under the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act, using its own staff or private research organizations under contract;

(6) To collect and disseminate information and conduct educational and training programs relating to air, water, and land pollution and the prevention, control, and abatement of such pollution;

(7) To issue, modify, or revoke orders (a) prohibiting or abating discharges of wastes into the air, waters, or land of the state and (b) requiring the construction of new disposal systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control, or abate pollution;

(8) To administer state grants to political subdivisions for solid waste disposal facilities and for the construction of sewage treatment works and facilities to dispose of water treatment plant wastes;

(9) To (a) hold such hearings and give notice thereof, (b) issue such subpoenas requiring the attendance of such witnesses and the production of such evidence, (c) administer such oaths, and (d) take such testimony as the director deems necessary, and any of these powers may be exercised on behalf of the director by a hearing officer designated by the director;

(10) To require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(11) To issue, continue in effect, revoke, modify, or deny permits, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, (a) to prevent, control, or abate pollution, (b) for the discharge of wastes into the air, land, or waters of the state, and (c) for the installation, modification, or operation of disposal systems or any parts thereof;

(12) To require proper maintenance and operation of disposal systems;

(13) To exercise all incidental powers necessary to carry out the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(14) To establish bureaus, divisions, or sections for the control of air pollution, water pollution, mining and land quality, and solid wastes which shall be administered by full-time salaried bureau, division, or section chiefs and to delegate and assign to each such bureau, division, or section and its officers and employees the duties and powers granted to the department for the enforcement of Chapter 81, article 15, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, and the standards, rules, and regulations adopted pursuant thereto;

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

(b) To require, for purposes of developing or assisting the development of any regulation or enforcing any of the provisions of the Environmental Protection Act which pertain to hazardous waste, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous waste, upon request of any officer, employee, or representative of the department, to furnish information relating to such waste and any permit involved. Such person shall have access at all reasonable times to a copy of all results relating to such waste;

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

(17) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(18) To encourage local units of government to handle air, land, and water pollution problems within their respective jurisdictions and on a cooperative basis and to provide technical and consultative assistance therefor;

(19) To consult with any person proposing to construct, install, or otherwise acquire an air, land, or water contaminant source or a device or system for control of such source, upon request of such person, concerning the efficacy of such device or system or concerning the air, land, or water pollution problem which may be related to the source, device, or system. Nothing in any such consultation shall be construed to relieve any person from compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, rules and regulations in force pursuant to the acts, or any other provision of law;

(20) To require all persons engaged or desiring to engage in operations which result or which may result in air, water, or land pollution to secure a permit prior to installation or operation or continued operation;

(21) To enter and inspect, during reasonable hours, any building or place, except a building designed for and used exclusively for a private residence;

(22) To receive or initiate complaints of air, water, or land pollution, hold hearings in connection with air, water, or land pollution, and institute legal proceedings in the name of the state for the control or prevention of air, water, or land pollution, and for the recovery of penalties, in accordance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(23) To delegate, by contract with governmental subdivisions which have adopted local air, water, or land pollution control programs approved by the council, the enforcement of state-adopted air, water, or land pollution control regulations within a specified region surrounding the jurisdictional area of the governmental subdivisions. Prosecutions commenced under such contracts shall be conducted by the Attorney General or county attorneys as provided in the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act;

(24) To conduct tests and take samples of air, water, or land contaminants, fuel, process materials, or any other substance which affects or may affect discharges or emissions of air, water, or land contaminants from any source, giving the owner or operator a receipt for the sample obtained;

(25) To develop and enforce compliance schedules, under such conditions as the director may prescribe and consistent with the standards, rules, and regulations adopted by the council, to prevent, control, or abate pollution;

(26) To employ the Governor's Keep Nebraska Beautiful Committee for such special occasions and projects as the department may decide. Reimbursement of the committee shall be made from state and appropriate federal matching funds for each assignment of work by the department as provided in sections 81-1174 to 81-1177;

(27) To provide, to the extent determined by the council to be necessary and practicable, for areawide, selective, and periodic inspection and testing of motor vehicles to secure compliance with applicable exhaust emission standards for a fee not to exceed five dollars to offset the cost of inspection;

(28) To enforce, when it is not feasible to prescribe or enforce any emission standard for control of air pollutants, the use of a design, equipment, a work practice, an operational standard, or a combination thereof, adequate to protect the public health from such pollutant or pollutants with an ample margin of safety;

(29) To establish the position of public advocate to be located within the department to assist and educate the public on departmental programs and to carry out all duties of the ombudsman as provided in the Clean Air Act, as amended, 42 U.S.C. 7661f;

(30) Under such conditions as it may prescribe for the review, recommendations, and written approval of the director, to require the submission of such plans, specifications, and other information as it deems necessary to carry out the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act or to carry out the rules and regulations adopted pursuant to the acts. When deemed necessary by the director, the plans and specifications shall be prepared and submitted by a professional engineer licensed to practice in Nebraska;

(31) To carry out the provisions of the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(32) To consider the risk to human health and safety and to the environment in evaluating and approving plans for remedial action.

**Source:** Laws 1971, LB 939, § 4; Laws 1972, LB 1435, § 3; Laws 1973, LB 254, § 1; Laws 1974, LB 1029, § 2; Laws 1979, LB 342, § 1; Laws 1980, LB 853, § 2; Laws 1981, LB 204, § 196; Laws 1983, LB 356, § 4; Laws 1984, LB 1078, § 2; Laws 1986, LB 217, § 15; Laws 1992, LB 1257, § 78; Laws 1994, LB 570, § 6; Laws 1996, LB 1226, § 13; Laws 1997, LB 622, § 124; Laws 1998, LB 1209, § 20.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.
* **Petroleum Products and Hazardous Substances Storage and Handling Act,** see section 81-15,117.

**81-1504.01. Department of Environmental Quality; reports required; contents.**

The Department of Environmental Quality shall provide the following information to the Governor and to the Clerk of the Legislature by December 1 of each year:

(1) A report by type of service or aid provided by the use and distribution of federal funds received by the department. The report shall also include user fees, permit fees, license fees, and application fees authorized by the federal Environmental Protection Agency as follows:

(a) Actual expenditure of each grant or authorized fees for the most recently completed state fiscal year, including state matching funds;

(b) Current budget and planned use and distribution of each grant and authorized fees for the current state fiscal year, including state matching funds;

(c) A summary of the projected funding level of each grant and authorized fees and the impact of federal mandates and regulations upon the future use of each grant and authorized fees; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(2) A summary of regulations of the federal Environmental Protection Agency which the department is required to implement and which do not include federal funding assistance and the possible financial impact to the state and political subdivisions;

(3) A report by type of service or aid provided by the use and distribution of state general and cash funds, including user fees, permit fees, license fees, and application fees, to carry out activities that are not funded by federal grants as follows:

(a) Actual expenditure of state funds, by agency sections, for the most recently completed state fiscal year, including a breakdown of expenditures by personal services, operations, travel, capital outlay, and consulting and contractual services;

(b) Current budget and planned use and distribution of state funds, by agency sections, for the current state fiscal year, including a breakdown of expenditures for personal services, operations, travel, capital outlay, and consulting and contractual services;

(c) A summary of projected program funding needs based upon the statutory requirements and public demand for services and the department's assessment of anticipated needs statewide; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(4) A report regarding staff turnover by job class and the department's assessment of its ability to hire and retain qualified staff considering the state's personnel pay plan;

(5) A report listing the method used by each new or existing licensee, permittee, or other person who is required by the department to establish proof of financial responsibility; and

(6) A report for the previous state fiscal year relating to the purpose of the Nebraska Litter Reduction and Recycling Act and of funds credited to the Nebraska Litter Reduction and Recycling Fund.

The reports and summaries submitted to the Clerk of the Legislature shall be submitted electronically.

**Source:** Laws 1991, LB 528, § 1; Laws 1993, LB 3, § 47; Laws 1993, LB 203, § 1; Laws 1994, LB 1034, § 2; Laws 2003, LB 143, § 9; Laws 2007, LB79, § 1; Laws 2012, LB782, § 201.

**Cross References**

* **Nebraska Litter Reduction and Recycling Act,** see section 81-1534.

**81-1504.02. Department; establish telephone line.**

The department shall establish a telephone line to provide information on the department's programs and requirements and to report complaints and suspected violations of the various environmental statutes and regulations which the department administers, as well as complaints regarding the department's regulation and enforcement activities. The department may charge a fee for the use of such a telephone line.

**Source:** Laws 1998, LB 1209, § 29.

**81-1504.03. Grants or loans; restrictions.**

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

**Source:** Laws 2001, LB 461, § 9.

**81-1505. Council; rules and regulations; standards of air, land, and water quality.**

(1) In order to carry out the purposes of the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act, the council shall adopt and promulgate 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. 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 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 classifications and standards shall be to protect the public health and welfare and the council shall give consideration to:

(a) The size, depth, surface area, 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, 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;

(d) The extent of present pollution or contamination of such waters which has already occurred or resulted from past discharges therein; and

(e) Procedures pursuant to section 401 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., for certification by the department of activities requiring a federal license or permit which may result in a discharge.

(3) In adopting effluent limitations or prohibitions, the council shall give consideration to the type, class, or category of discharges and 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, when 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 and the degree of disinfection necessary to meet water quality standards with respect to construction, installation, change of, alterations in, or additions to any wastewater treatment works or disposal systems, including issuance of permits and proper abandonment, and requirements necessary for proper operation and maintenance thereof.

(9)(a) The council shall adopt and promulgate rules and regulations for controlling mineral exploration holes and mineral production and injection wells. The rules and regulations shall include standards for the construction, operation, and abandonment of such holes and wells. The standards shall protect the public health and welfare and air, land, water, and subsurface resources so as to control, minimize, and eliminate hazards to humans, animals, and the environment. Consideration shall be given to:

(i) Area conditions such as suitability of location, geologic formations, topography, industry, agriculture, population density, wildlife, fish and other aquatic life, sites of archeological and historical importance, mineral, land, and water resources, and the existing economic activities of the area including, but not limited to, agriculture, recreation, tourism, and industry;

(ii) A site-specific evaluation of the geologic and hydrologic suitability of the site and the injection, disposal, and production zones;

(iii) The quality of the existing ground water, the effects of exemption of the aquifer from any existing water quality standards, and requirements for restoration of the aquifer;

(iv) Standards for design and use of production facilities, which shall include, but not be limited to, all wells, pumping equipment, surface structures, and associated land required for operation of injection or production wells; and

(v) Conditions required for closure, abandonment, or restoration of mineral exploration holes, injection and production wells, and production facilities in order to protect the public health and welfare and air, land, water, and subsurface resources.

(b) The council shall establish fees for regulated activities and facilities and for permits for such activities and facilities. The fees shall be sufficient but shall not exceed the amount necessary to pay the department for the direct and indirect costs of evaluating, processing, and monitoring during and after operation of regulated facilities or performance of regulated activities.

(c) With respect to mineral production wells, the council shall adopt and promulgate rules and regulations which require restoration of air, land, water, and subsurface resources and require mineral production well permit applications to include a restoration plan for the air, land, water, and subsurface resources affected. Such rules and regulations may provide for issuance of a research and development permit which authorizes construction and operation of a pilot plant by the permittee for the purpose of demonstrating the permittee's ability to inject and restore in a manner which meets the standards required by this subsection and the rules and regulations.

The rules and regulations adopted and promulgated may also provide for issuance of a commercial permit after a finding by the department that the injection and restoration procedures authorized by the research and development permit have been successful in demonstrating the applicant's ability to inject and restore in a manner which meets the standards required by this subsection and the rules and regulations.

(d) For the purpose of this subsection, unless the context otherwise requires, restoration shall mean the employment, during and after an activity, of procedures reasonably designed to control, minimize, and eliminate hazards to humans, animals, and the environment, to protect the public health and welfare and air, land, water, and subsurface resources, and to return each resource to a quality of use consistent with the uses for which the resource was suitable prior to the activity.

(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 ground water from such operations, and revocation, modification, or suspension of such permits for cause and all requirements of the Livestock Waste Management Act.

(11) In adopting regulations for the issuance of permits under the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., 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) The council shall adopt and promulgate rules and regulations for air pollution control which shall include:

(a) A construction permit program which requires the owner or operator of an air contaminant source to obtain a permit prior to construction. Application fees shall be according to section 81-1505.06;

(b) An operating permit program consistent with requirements of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and an operating permit program for minor sources of air pollution, which programs shall require permits for both new and existing sources;

(c) Provisions for operating permits to be issued after public notice, to be terminated, modified, or revoked for cause, and to be modified to incorporate new requirements;

(d) Provisions for applications to be on forms provided by the department and to contain information necessary to make a determination on the appropriateness of issuance or denial. The department shall make a completeness determination in a timely fashion and after such determination shall act on the application within time limits set by the council. Applications for operating permits shall include provisions for certification of compliance by the applicant;

(e) Requirements for operating permits which may include such conditions as necessary to protect public health and welfare, including, but not limited to (i) monitoring and reporting requirements on all sources subject to the permit, (ii) payment of annual fees sufficient to pay the reasonable direct and indirect costs of developing and administering the air quality permit program, (iii) retention of records, (iv) compliance with all air quality standards, (v) a permit term of no more than five years from date of issuance, (vi) any applicable schedule of compliance leading to compliance with air quality regulations, (vii) site access to the department for inspection of the facility and records, (viii) emission limits or control technology requirements, (ix) periodic compliance certification, and (x) other conditions necessary to carry out the purposes of the Environmental Protection Act. For purposes of this subsection, control technology shall mean a design, equipment, a work practice, an operational standard which may include a requirement for operator training or certification, or any combination thereof;

(f) Classification of air quality control regions;

(g) Standards for air quality that may be established based upon protection of public health and welfare, emission limitations established by the United States Environmental Protection Agency, and maximum achievable control technology standards for sources of toxic air pollutants. For purposes of this subdivision, maximum achievable control technology standards shall mean an emission limit or control technology standard which requires the maximum degree of emission reduction that the council, taking into consideration the cost of achieving such emission reduction, any health and environmental impacts not related to air quality, and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which the standard applies through application of measures, processes, methods, systems, or techniques, including, but not limited to, measures which accomplish one or a combination of the following:

(i) Reduce the volume of or eliminate emissions of the pollutants through process changes, substitution of materials, or other modifications;

(ii) Enclose systems or processes to eliminate emissions; or

(iii) Collect, capture, or treat the pollutants when released from a process, stack, storage, or fugitive emission point;

(h) Restrictions on open burning and fugitive emissions;

(i) Provisions for issuance of general operating permits, after public notice, for sources with similar operating conditions and for revoking such general authority to specific permittees;

(j) Provisions for implementation of any emissions trading programs as defined by the department. Such programs shall be consistent with the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and administered through the operating permit program;

(k) A provision that operating permits will not be issued if the Environmental Protection Agency objects in a timely manner;

(l) Provisions for periodic reporting of emissions;

(m) Limitations on emissions from process operations, fuel-burning equipment, and incinerator emissions and such other restrictions on emissions as are necessary to protect the public health and welfare;

(n) Time schedules for compliance;

(o) Requirements for owner or operator testing and monitoring of emissions;

(p) Control technology requirements when it is not feasible to prescribe or enforce an emission standard; and

(q) Procedures and definitions necessary to carry out payment of the annual emission fee set in section 81-1505.04.

(13)(a) In adopting regulations for hazardous waste management, the council shall give consideration to generation of hazardous wastes, labeling practices, containers used, treatment, storage, collection, transportation including a manifest system, processing, resource recovery, and disposal of hazardous wastes. It shall consider the permitting, licensing, design and construction, and development and operational plans for hazardous waste treatment, storage, and disposal facilities, and conditions for licensing or permitting of hazardous waste treatment, storage, and disposal areas. It shall consider modification, suspension, or revocation of such licenses and permits, including requirements for waste analysis, site improvements, fire prevention, safety, security, restricted access, and covering and handling of hazardous liquids and materials. Licenses and permits for hazardous waste, treatment, storage, and disposal facilities shall not be issued until certification by the State Fire Marshal as to fire prevention and fire safety has been received by the department. The council shall further consider the need at treatment, storage, or disposal facilities for required equipment, communications and alarms, personnel training, and contingency plans for any emergencies that might arise and for a coordinator during such emergencies.

In addition the council shall give consideration to (i) ground water monitoring, (ii) use and management of containers and tanks, (iii) surface impoundments, (iv) waste piles, (v) land treatment, (vi) incinerators, (vii) chemical or biological treatment, (viii) landfills including the surveying thereof, and (ix) special requirements for ignitable, reactive, or incompatible wastes.

In considering closure and postclosure of hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would result in the owner or operator closing his or her facility so as to minimize the need for future maintenance, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, postclosure escape of hazardous waste, hazardous waste constituents, and leachate to the ground water or surface waters, and to control, minimize, or eliminate, to the extent necessary to protect humans, animals, and the environment, waste decomposition to the atmosphere. In considering corrective action for hazardous waste treatment, storage, or disposal facilities, the council shall consider regulations that would require the owner or operator, or any previous owner or operator with actual knowledge of the presence of hazardous waste at the facility, to undertake corrective action or such other response measures necessary to protect human health or the environment for all releases of hazardous waste or hazardous constituents from any treatment, storage, or disposal facility or any solid waste management unit at such facility regardless of the time at which waste was placed in such unit.

Such regulations adopted pursuant to this subsection shall in all respects comply with the Environmental Protection Act and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(b) In adopting regulations for hazardous waste management, the council shall consider, in addition to criteria in subdivision (a) of this subsection, establishing criteria for (i) identifying hazardous waste including extraction procedures, toxicity, persistence, and degradability in nature, potential for accumulation in tissue, flammability or ignitability, corrosiveness, reactivity, and generation of pressure through decomposition, heat, or other means, and other hazardous characteristics, (ii) listing all materials it deems hazardous and which should be subject to regulation, and (iii) locating treatment, storage, or disposal facilities for such wastes. In adopting criteria for flammability and ignitability of wastes pursuant to subdivision (b)(i) of this subsection, no regulation shall be adopted without the approval of the State Fire Marshal.

(c) In adopting regulations for hazardous waste management, the council shall establish a schedule of fees to be paid to the director by licensees or permittees operating hazardous waste processing facilities or disposal areas on the basis of a monetary value per cubic foot or per pound of the hazardous wastes, sufficient but not exceeding the amount necessary to reimburse the department for the costs of monitoring such facilities or areas during and after operation of such facilities or areas. The licensees may assess a cost against persons using the facilities or areas. The director shall remit any money collected from fees paid to him or her to the State Treasurer who shall credit the entire amount thereof to the General Fund.

(d) In adopting regulations for solid waste disposal, the council shall consider storage, collection, transportation, processing, resource recovery, and disposal of solid waste, developmental and operational plans for solid waste disposal areas, conditions for permitting of solid waste disposal areas, modification, suspension, or revocation of such permits, regulations of operations of disposal areas, including site improvements, fire prevention, ground water protection, safety and restricted access, handling of liquid and hazardous materials, insect and rodent control, salvage operations, and the methods of disposing of accumulations of junk outside of solid waste disposal areas. Such regulations shall in all respects comply with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.

(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 the requirements of the Integrated Solid Waste Management Act, methods for prevention of such discharges or emissions, and the responsibility of the discharger or emitter for cleanup, toxicity, degradability, and dispersal characteristics of the substance.

(15) In adopting regulations governing composting and composting sites, the council shall give consideration to:

(a) Approval of a proposed site by the local governing body, including the zoning authority, if any, prior to issuance of a permit by the department;

(b) Issuance of permits by the department for such composting operations, with conditions if necessary;

(c) Submission of construction and operational plans by the applicant for a permit to the department, with approval of such plans before issuance of such permit;

(d) A term of up to ten years for such permits;

(e) Renewal of permits if the operation has been in substantial compliance with composting regulations adopted pursuant to this subsection, permit conditions, and operational plans;

(f) Review by the department of materials to be composted, including chemical analysis when found by the department to be necessary;

(g) Inspections of such compost sites by the department. Operations out of compliance with composting regulations, permit conditions, or operational plans shall be given a reasonable time for voluntary compliance, and failure to do so within the specified time shall result in a hearing after notice is given, at which time the owner or operator shall appear and show cause why his or her permit should not be revoked;

(h) Special permits of the department for demonstration projects not to exceed six months;

(i) Exemptions from permits of the department; and

(j) The Integrated Solid Waste Management Act.

(16) 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 discharges and emissions, and such other information as is relevant to air, water, or land pollution and is available.

(17) Prior to adopting, amending, or repealing standards and classifications of air, water, and land quality and rules and regulations under the Integrated Solid Waste Management Act or the Livestock Waste Management Act, 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. Such notice shall be given in accordance with the Administrative Procedure Act.

(18) Standards of quality of the air, water, or land of the state and rules and regulations adopted under the Integrated Solid Waste Management Act or the Livestock Waste Management Act or any amendment or repeal of such standards or rules and regulations 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, water, or land of the state to comply with such standards and upon the expiration of any such period of time may revoke or modify any permit previously issued which authorizes the discharge of wastes into the air, water, or land of this state which results in reducing the quality of such air, water, or land below the standards established therefor by the council.

(19) All standards of quality of air, water, or land and all rules and regulations adopted pursuant to law by the council prior to May 29, 1981, and applicable to specified air, water, or land are hereby approved and adopted as standards of quality of and rules and regulations for such air, water, or land.

(20) In addition to such standards as are heretofore authorized, the council shall adopt and promulgate 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 Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(21)(a) The council shall adopt and promulgate rules and regulations requiring all new or renewal permit or license applicants regulated under the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act to establish proof of financial responsibility by providing funds in the event of abandonment, default, or other inability of the permittee or licensee to meet the requirements of its permit or license or other conditions imposed by the department pursuant to the acts. The council may exempt classes of permittees or licensees from the requirements of this subdivision when a finding is made that such exemption will not result in a significant risk to the public health and welfare.

(b) Proof of financial responsibility shall include any of the following made payable to or held in trust for the benefit of the state and approved by the department:

(i) A surety bond executed by the applicant and a corporate surety licensed to do business in this state;

(ii) A deposit of cash, negotiable bonds of the United States or the state, negotiable certificates of deposit, or an irrevocable letter of credit of any bank or other savings institution organized or transacting business in the United States in an amount or which has a market value equal to or greater than the amount of the bonds required for the bonded area under the same terms and conditions upon which surety bonds are deposited;

(iii) An established escrow account; or

(iv) A bond of the applicant without separate surety upon a satisfactory demonstration to the director that such applicant has the financial means sufficient to self-bond pursuant to bonding requirements adopted by the council consistent with the purposes of this subdivision.

(c) The director shall determine the amount of the bond, deposit, or escrow account which shall be reasonable and sufficient so the department may, if the permittee or licensee is unable or unwilling to do so and in the event of forfeiture of the bond or other financial responsibility methods, arrange to rectify any improper management technique committed during the term of the permit or license and assure the performance of duties and responsibilities required by the permit or license pursuant to law, rules, and regulations.

(d) In determining the amount of the bond or other method of financial responsibility, the director shall consider the requirements of the permit or license or any conditions specified by the department, the probable difficulty of completing the requirements of such permit, license, or conditions due to such factors as topography, geology of the site, and hydrology, and the prior history of environmental activities of the applicant.

This subsection shall apply to hazardous waste treatment, storage, or disposal facilities which have received interim status.

(22) The council shall adopt and promulgate rules and regulations no more stringent than the provisions of section 1453 et seq. of the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300j-13 et seq., for public water system source water assessment programs.

The council may adopt and promulgate rules and regulations to implement a source water petition program no more stringent than section 1454 et seq. of the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300j-14 et seq.

**Source:** Laws 1971, LB 939, § 5; Laws 1972, LB 1435, § 4; Laws 1973, LB 538, § 2; Laws 1974, LB 1029, § 3; Laws 1979, LB 342, § 2; Laws 1980, LB 853, § 3; Laws 1981, LB 216, § 3; Laws 1983, LB 356, § 5; Laws 1984, LB 1078, § 3; Laws 1986, LB 1008, § 2; Laws 1992, LB 1257, § 79; Laws 1993, LB 623, § 3; Laws 1994, LB 570, § 7; Laws 1994, LB 1031, § 1; Laws 1997, LB 517, § 25; Laws 1998, LB 1209, § 21; Laws 1999, LB 784, § 1; Laws 2001, LB 126, § 1; Laws 2001, LB 667, § 49; Laws 2004, LB 449, § 1; Laws 2006, LB 872, § 3; Laws 2011, LB30, § 1.

**Cross References**

* **Administrative Procedure Act,** see section 84-920.
* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.

**81-1505.01. Department of Environmental Quality Cash Fund; created; use; investment.**

There is hereby created the Department of Environmental Quality Cash Fund which shall be used to pay the expenses of the department. The department shall remit all fees collected pursuant to subsection (9) of section 81-1505 and section 81-1521.09 to the State Treasurer for credit to the fund. Any fee collected pursuant to section 81-1521.09 shall be used to pay the expenses related to the notice of intent for which the fee was paid. 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.

**Source:** Laws 1983, LB 356, § 8; Laws 1987, LB 114, § 1; Laws 1992, LB 1257, § 80; Laws 1993, LB 3, § 48; Laws 1994, LB 1066, § 112; Laws 1995, LB 429, § 2.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**81-1505.02. Mineral exploration holes; rules and regulations.**

The council may adopt and promulgate rules and regulations governing mineral exploration holes prior to August 1, 1983, but such rules and regulations shall not be effective until such date.

The council shall adopt and promulgate rules and regulations authorized by the amendments made by Laws 1983, LB 356, to subsection (9) of section 81-1505 within one hundred twenty days of May 26, 1983. All requirements of the Environmental Protection Act shall apply to any permit application regardless of the date of submission, except that the department shall continue to diligently process any application submitted prior to May 26, 1983.

**Source:** Laws 1983, LB 356, § 9.

**81-1505.03. Small Business Compliance Advisory Panel; created; members; duties; expenses.**

(1) There is hereby created the Small Business Compliance Advisory Panel. The panel shall consist of the following:

(a) Two members who are not owners or representatives of owners of small business stationary sources of air emissions selected by the Governor to represent the general public;

(b) Four members selected by the Legislature who are owners or who represent owners of small business stationary sources of air emissions; and

(c) One member selected by the director.

(2) The panel shall be responsible for all requirements of the Clean Air Act, 42 U.S.C. 7401 et seq., as such act existed on January 1, 2004. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The panel shall conduct its meetings in accordance with the Open Meetings Act and shall submit an annual report to the Governor no later than January 1 of each year. The panel shall receive necessary staff support from the department.

**Source:** Laws 1992, LB 1257, § 81; Laws 2004, LB 821, § 31.

**Cross References**

* **Open Meetings Act,** see section 84-1407.

**81-1505.04. Annual emission fee; payment; amount; adjustment; allocation of costs; department; duties; report.**

(1)(a) 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.

(b) Beginning with calendar year 2001 emissions, fees shall not be paid for a mid-sized electric generation facility on amounts in excess of four hundred tons per year for any regulated pollutant.

(c) A mid-sized electric generation facility owned by a municipality shall continue to be considered a separate mid-sized electric generation facility for purposes of this section even if the facility is subsequently permitted with another general unit larger than one hundred fifteen megawatts under separate ownership. Each facility under separate ownership shall be considered a separate major source for purposes of this section.

(d) For purposes of this section, mid-sized electric generation facility means a facility that:

(i) Uses coal as the primary source of fuel in the facility's largest generation unit;

(ii) Has a name plate generating capacity of between seventy and one hundred fifteen megawatts in the facility's largest generation unit; and

(iii) Is not operating in a political subdivision which has been delegated the authority to enforce the air quality permit program within its jurisdiction.

(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 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 the act existed on May 31, 2001, 42 U.S.C. 7661a through f, 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;

(viii) Developing and implementing any emissions trading programs as defined by the department; and

(ix) 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 the act existed on May 31, 2001, 42 U.S.C. 7401 et seq.

(3) On or before January 1 of each year, the department shall submit electronically 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. 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.

(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.

**Source:** Laws 1992, LB 1257, § 82; Laws 1996, LB 634, § 1; Laws 2001, LB 461, § 7; Laws 2005, LB 94, § 1; Laws 2006, LB 872, § 4; Laws 2011, LB156, § 1; Laws 2012, LB782, § 202.

**81-1505.05. Clean Air Title V Cash Fund; created; use; investment.**

The Clean Air Title V Cash Fund is created. The department shall remit all fees collected pursuant to section 81-1505.04 to the State Treasurer for credit to the fund. Any fee collected pursuant to section 81-1505.04 shall be used solely to pay the reasonable direct and indirect costs required to develop and administer the air quality permit program, including expenses of the Small Business Compliance Advisory Panel. 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.

**Source:** Laws 1995, LB 429, § 1.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**81-1505.06. Air quality construction permit; fees; Air Quality Permit Cash Fund; created; use; investment.**

(1) Beginning January 1, 2005, each application for an air quality construction permit required by rules and regulations adopted pursuant to subsection (12) of section 81-1505 shall be accompanied by an application fee. If fees are required under more than one subdivision of this subsection, the application shall be accompanied by the one fee which is the highest of the applicable fees. The application fee shall be based on potential to emit, as defined in such rules and regulations, in accordance with the following schedule:

(a) Three thousand dollars for facilities that directly emit or have the potential to emit one hundred tons per year or more of any air pollutant, except hazardous air pollutants;

(b) Three thousand dollars for facilities that directly emit or have the potential to emit ten tons per year or more of any single hazardous air pollutant or twenty-five tons per year or more of any combination of hazardous air pollutants;

(c) One thousand five hundred dollars for facilities that directly emit or have the potential to emit fifty tons per year or more but less than one hundred tons per year of any air pollutant, except hazardous air pollutants;

(d) One thousand five hundred dollars for facilities that directly emit or have the potential to emit (i) two and one-half tons per year or more but less than ten tons per year of any single hazardous air pollutant or (ii) ten tons per year or more but less than twenty-five tons per year of any combination of hazardous air pollutants;

(e) Two hundred fifty dollars for facilities that directly emit or have the potential to emit less than fifty tons per year of any air pollutant, except hazardous air pollutants; and

(f) Two hundred fifty dollars for facilities that directly emit or have the potential to emit (i) less than two and one-half tons per year of any single hazardous air pollutant and (ii) less than ten tons per year of any combination of hazardous air pollutants.

(2) All application fees collected under this section shall be remitted to the State Treasurer for credit to the Air Quality Permit Cash Fund, which fund is hereby created. The Air Quality Permit Cash Fund shall be used for purposes identified in subsection (12) of section 81-1505. 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.

(3) For purposes of this section, (a) air pollutant means particulate matter with a diameter of ten microns or less, sulfur dioxide or sulfur trioxide or any combination of the two, oxides of nitrogen, volatile organic compounds, and carbon monoxide and (b) hazardous air pollutant means any pollutant defined as such in rules and regulations adopted pursuant to subsection (12) of section 81-1505.

**Source:** Laws 2004, LB 449, § 2.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**81-1506. Unlawful acts.**

(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. An animal feeding operation is not a nuisance if:

(i) Reasonable techniques are employed to keep dust, noise, insects, and odor at a minimum;

(ii) It is in compliance with applicable regulations adopted by the council and zoning regulations of the local governing body having jurisdiction; and

(iii) The action is brought by or on behalf of a person whose date of lawful possession of the land claimed to be affected by an animal feeding operation is subsequent to the issuance of an appropriate permit by the department for such operation or is subsequent to the operation of the feedlot and an onsite inspection by the department is made, before or after filing of the suit, and the inspection reveals that no permit is required for such operation.

(2) It shall be unlawful for any person to:

(a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by rules and regulations adopted and promulgated pursuant to section 81-1505;

(b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department;

(c) Increase in volume or strength any waste in excess of permitted discharges specified under any existing permit;

(d) Construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise cause an alteration of the physical, chemical, or biological properties of any air, waters, or land of the state in a manner that is not lawfully authorized; or

(e) Construct or use any new outlet for the discharge or emission of any wastes into the air, waters, or land of the state without the necessary permit.

(3) It shall be unlawful for any person to:

(a) Construct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and the rules and regulations adopted and promulgated by the council pursuant to the acts;

(b) Violate any term or condition of a solid waste management facility permit;

(c) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Integrated Solid Waste Management Act; or

(d) After October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act.

(4) It shall be unlawful to:

(a) Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505;

(b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or

(c) Violate any emission limit or air quality standard established by the council.

(5) It shall be unlawful for any person to:

(a) Construct or operate an animal feeding operation without first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts;

(b) Violate any provision of the Livestock Waste Management Act;

(c) Violate any term or condition of an animal feeding operation permit; or

(d) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Livestock Waste Management Act.

(6) 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.

**Source:** Laws 1971, LB 939, § 6; Laws 1972, LB 1435, § 5; Laws 1974, LB 1029, § 4; Laws 1977, LB 132, § 1; Laws 1980, LB 915, § 1; Laws 1983, LB 356, § 6; Laws 1992, LB 1257, § 83; Laws 1993, LB 623, § 4; Laws 1994, LB 570, § 8; Laws 1998, LB 1209, § 22; Laws 2004, LB 916, § 26.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.

**81-1507. Director; violations; hearings; orders.**

(1) Whenever the director has reason to believe that a violation of any provision of the Environmental Protection Act, the Integrated Solid Waste Management Act, the Livestock Waste Management Act, a rule or regulation pursuant to such acts, or any order of the department has occurred, he or she may cause a written complaint to be served upon the alleged violator or violators or he or she may bring a criminal or civil action under section 81-1508.01 or 81-1508.02. The complaint shall specify the provision of the act, rule 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.

Whenever, on the basis of any information, the director determines that there is or has been a release of hazardous waste or hazardous constituents into the environment from a facility authorized to operate under the Environmental Protection Act or from a facility subject to hazardous waste management regulations adopted and promulgated under the act, the director may issue an order requiring the owner or operator to monitor, investigate, and undertake corrective action or such other response at the facility or beyond the facility boundary where necessary to protect human health and the environment. In the case of any facility or site not in operation at the time a determination is made to require corrective action, if the director finds that the owner could not reasonably be expected to have actual knowledge of the presence of hazardous waste at the site, the director may issue an order requiring any previous owner or operator who could reasonably be expected to have actual knowledge to carry out the necessary monitoring, investigation, and corrective action.

(2) The director shall afford an opportunity for a fair hearing, in accordance with the provisions of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act, 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 or her opinion will best further the purposes of the acts and shall give written notice of such order to the alleged violator and to such other persons who appear at the hearing and make 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 or her order on the basis of such record, shall provide opportunity to the parties to submit for his or her 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 section 81-1509 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 his or her 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 shall be served on any person affected thereby in a manner provided for service of a summons in a civil action. Proof of service shall be 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 or her behalf, or the director may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the 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 as in civil actions in the district court and mileage as provided in section 81-1176. 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.

**Source:** Laws 1971, LB 939, § 7; Laws 1972, LB 1435, § 6; Laws 1974, LB 1029, § 5; Laws 1981, LB 204, § 197; Laws 1983, LB 447, § 99; Laws 1987, LB 152, § 2; Laws 1992, LB 1257, § 84; Laws 1998, LB 1209, § 23; Laws 1999, LB 784, § 2; Laws 1999, LB 789, § 1.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2401.

**81-1508. Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; civil penalties; injunctions.**

(1) Any person who violates any of the provisions of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act, fails to perform any duty imposed by either act or any rule or regulation issued thereunder, or violates any order or determination of the director promulgated pursuant to either act and causes the death of fish or other wildlife shall, in addition to the penalties provided in sections 81-1508.01 and 81-1508.02, be liable to pay to the state an additional amount equal to the sum of money reasonably necessary to restock waters with fish or replenish such wildlife as determined by the director after consultation with the Game and Parks Commission. Such amount may be recovered by the director on behalf of the state in a civil action brought in the district court of the county in which such violation or failure to perform the duty imposed occurred.

(2) Except as provided for in subsection (3) of this section for the handling, storage, treatment, transportation, or disposal of solid or hazardous waste, in addition to the penalties provided by this section and sections 81-1508.01 and 81-1508.02, the director, whenever he or she has reason to believe that any person, firm, or corporation is violating or threatening to violate any provision of the acts, any rule or regulation adopted and promulgated thereunder, or any order of the director, may petition the district court for an injunction. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the acts.

(3) Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to the health of humans or animals or to the environment, the director may petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts, to stop such handling, storage, treatment, transportation, or disposal, and to take such other action as may be necessary. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act.

**Source:** Laws 1971, LB 939, § 8; Laws 1972, LB 1435, § 7; Laws 1973, LB 538, § 3; Laws 1979, LB 342, § 3; Laws 1981, LB 216, § 4; Laws 1983, LB 356, § 7; Laws 1984, LB 1078, § 4; Laws 1987, LB 565, § 1; Laws 1991, LB 413, § 1; Laws 1992, LB 1257, § 85; Laws 1994, LB 570, § 9; Laws 1998, LB 1209, § 24.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.

**81-1508.01. Violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act; criminal penalties.**

(1) Any person who violates the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act by knowingly and willfully committing any of the following offenses shall be guilty of a Class IV felony:

(a) Violating any water pollution control law, rule, or regulation adopted pursuant to the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., or any permit or permit condition or limitation or failing to obtain a permit as required by the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act;

(b) Violating any air pollution control law, rule, regulation, permit, license, or permit or license condition or limitation;

(c) Violating any hazardous waste control law, rule, regulation, permit, license, or permit or license condition or limitation;

(d) Violating any mineral production, mineral exploration, or injection control law, rule, regulation, permit, license, or permit or license condition or limitation;

(e) Making any false statement, representation, or certification in any application, label, manifest, record, report, plan, or other document required to be filed or maintained by the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts;

(f) Falsifying, tampering with, or rendering inaccurate any monitoring device or method used or required for compliance with any permit or license or the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts; or

(g) Transporting hazardous waste to an unpermitted facility.

(2) Any person who violates the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act by knowingly and willfully committing any of the following offenses shall be guilty of a Class I misdemeanor:

(a) Violating any solid waste control law, rule, regulation, permit, license, or permit or license condition or limitation; or

(b) Violating any livestock waste control law, rule, regulation, permit, license, or permit or license condition or limitation.

(3) Any person who knowingly and willfully violates any other provision of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or any rule or regulation adopted and promulgated pursuant to such acts shall be guilty of a Class III misdemeanor.

(4) Each violation under this section shall be actionable. In case of a continuing violation, each day shall constitute a separate offense. Any person who knowingly and willfully violates this section shall be subject to personal liability under this section. In assessing the amount of any fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

**Source:** Laws 1994, LB 570, § 10; Laws 1998, LB 1209, § 25.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.

**81-1508.02. Unlawful acts; civil penalty.**

(1) It shall be unlawful for any person:

(a) To refuse the right of entry and inspection to any authorized representative of the department when the representative is acting under the provisions of a permit issued by the department;

(b) To violate any air, water, or land quality standards, any emission or effluent standards or limitations, any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts;

(c) To make any false statement, representation, or certification in any application, label, record, report, plan, or other document required to be filed or maintained by such acts, rules, or regulations;

(d) To falsify, tamper with, or render inaccurate any monitoring device or method used or required for compliance with a permit or license or such acts, rules, or regulations; or

(e) To violate any other provision of or fail to perform any other duty imposed by such acts, rules, or regulations.

(2) Each violation of this section or of section 81-1506 shall subject a person to a civil penalty of no more than ten thousand dollars per day. In case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

**Source:** Laws 1994, LB 570, § 11; Laws 1998, LB 1209, § 26; Laws 1999, LB 789, § 2.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2401.

**81-1509. Appeal; procedure.**

An appeal may be taken from any final decision of the director, and the appeal shall be in accordance with the Administrative Procedure Act.

**Source:** Laws 1971, LB 939, § 9; Laws 1972, LB 1435, § 8; Laws 1974, LB 1029, § 6; Laws 1979, LB 321, § 3; Laws 1988, LB 352, § 174.

**Cross References**

* **Administrative Procedure Act,** see section 84-920.

**81-1510. Director; voluntary compliance; records.**

(1) The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

(2) The director may require the maintenance of records relating to the operation of disposal systems, and any authorized representative of the director may examine and copy any such records or memoranda pertaining to the operation of disposal systems. Copies of such records shall be submitted to the director upon request.

**Source:** Laws 1971, LB 939, § 10; Laws 1972, LB 1435, § 9; Laws 1992, LB 1257, § 86.

**81-1511. Department; inspections; search warrants.**

Any duly authorized officer, employee, or representative of the director may at any reasonable time, with the consent of the person or persons in control of an air, land, or water contaminant source, enter and inspect any property, premise, or place on or at which such a contaminant source is located or being constructed, installed, or established for the purpose of ascertaining the state of compliance with the Environmental Protection Act, the Integrated Solid Waste Management Act, and the Livestock Waste Management Act and rules and regulations in force pursuant to the acts. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath or affirmation, may be issued by the district court as provided by law to such officer, employee, or representative of the department for the purpose of enabling him or her to make such inspection. No person shall refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials and warrants. No person shall obstruct, hamper, or interfere with any such inspection. Nothing in this section shall be construed to prevent prompt inspection without consent or appropriate warrant in acute and compelling emergency situations when there is neither sufficient time nor opportunity to obtain a search warrant. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

**Source:** Laws 1971, LB 939, § 11; Laws 1972, LB 1435, § 10; Laws 1987, LB 152, § 3; Laws 1992, LB 1257, § 87; Laws 1998, LB 1209, § 27.

**Cross References**

* **Inspection of grain warehouses,** department, duties, see section 88-550.
* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.

**81-1512. Department; emergency powers.**

Nothing in the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration if such power is conferred by statute or constitutional provision or inheres in the office.

**Source:** Laws 1971, LB 939, § 12; Laws 1987, LB 152, § 4; Laws 1992, LB 1257, § 88; Laws 1998, LB 1209, § 28.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Livestock Waste Management Act,** see section 54-2416.

**81-1513. Variances from rules or regulations; notice; conditions for granting; appeal.**

(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 or she finds that the emissions or discharges 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 discharges 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 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. Before any variance is granted, the director shall give public notice of an application for such variance immediately upon receipt of such application and in accordance with the rules and regulations of the department. The notice shall be published in a newspaper of general circulation in the county in which the plant, building structure, process, or equipment on which the proposed variance is located.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section, 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 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 and before approving the renewal application, the director shall give public notice of such application in accordance with rules and regulations of the department. The public notice shall be published in a newspaper of general circulation in the county in which the plant, building structure, process, or equipment on which the variance is located.

(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 appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(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 81-1507 to any person or his or her property.

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

**Source:** Laws 1971, LB 939, § 13; Laws 1972, LB 1435, § 11; Laws 1974, LB 1029, § 7; Laws 1988, LB 352, § 175; Laws 2006, LB 975, § 19.

**Cross References**

* **Administrative Procedure Act,** see section 84-920.

**81-1514. Land resources; public policy.**

It is hereby declared to be the public policy of the State of Nebraska to achieve and maintain such a reasonable degree of purity of the land resources of the state as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of the state, protect the scenic beauty of the state, facilitate the enjoyment of the natural attractions of the state, and to provide for the prevention, abatement and control of new or existing land pollution.

**Source:** Laws 1971, LB 939, § 14.

**81-1515. Repealed. Laws 1972, LB 1435, § 16.**

**81-1516. Refuse, garbage, and rubbish; disposal; conditions.**

No person shall dispose of any refuse, garbage, or rubbish at any place except a disposal area for which a permit has been issued as provided by the Environmental Protection Act or, on and after October 1, 1993, in a facility for which a permit has been issued under the Integrated Solid Waste Management Act. Nothing in either act and no act of the director shall usurp the legal right of a local governing body to develop and enforce local ordinances, codes, or rules and regulations on solid waste disposal equal to or more stringent than the provisions of the acts as necessary to protect the public health and welfare and the environment, and the provisions of the acts shall not relieve the applicant from obtaining a permit from a local governing body when required or relieve the person owning or operating a disposal area from responsibility for securing proper zoning permits or complying with all applicable local ordinances, codes, or rules and regulations not in conflict with the provisions of the acts.

**Source:** Laws 1971, LB 939, § 16; Laws 1987, LB 152, § 5; Laws 1992, LB 1257, § 89.

**Cross References**

* **Garbage and solid waste disposal facilities,** construction and operation by cities of the first and second classes and villages, see sections 19-2101 to 19-2111.
* **Integrated Solid Waste Management Act,** see section 13-2001.
* **Solid waste disposal areas and facilities,** siting approval from city, village, or county, see sections 13-1701 to 13-1714.

**81-1517. Repealed. Laws 1992, LB 1257, § 105.**

**81-1518. Repealed. Laws 1992, LB 1257, § 105.**

**81-1519. Repealed. Laws 1992, LB 1257, § 105.**

**81-1520. Repealed. Laws 1992, LB 1257, § 105.**

**81-1521. Repealed. Laws 1974, LB 1029, § 10.**

**81-1521.01. Transferred to section 81-1521.15.**

**81-1521.02. Transferred to section 81-1521.17.**

**81-1521.03. Transferred to section 81-1521.20.**

**81-1521.04. Transferred to section 81-1521.21.**

**81-1521.05. Transferred to section 81-1521.22.**

**81-1521.06. Transferred to section 81-1521.23.**

**81-1521.07. Repealed. Laws 1987, LB 152, § 12.**

**81-1521.08. Hazardous waste; terms, defined.**

For purposes of sections 81-1521.08 to 81-1521.23, unless the context otherwise requires:

(1) Chief executive officer shall mean the mayor, city manager, or chairperson of the board of trustees of a municipality;

(2) Commercial hazardous waste management facility shall mean a hazardous waste management facility which accepts hazardous waste for treatment, storage, or disposal which is generated by any person other than the person which owns or operates such facility;

(3) Committee shall mean the specific site review committee established in response to a notice of intent filed pursuant to section 81-1521.09;

(4) Hazardous waste management facility shall mean all contiguous land, and structures, other appurtenances, and improvements on the land, used for the treatment, storage, or disposal of hazardous waste. A hazardous waste management facility may consist of several treatment, storage, or disposal operational units such as one or more landfills or surface impoundments or any combination of such operational units;

(5) Municipality shall mean an incorporated city or village; and

(6) Other definitions found in section 81-1502 shall apply.

**Source:** Laws 1987, LB 114, § 2.

**81-1521.09. Hazardous waste; commercial hazardous waste management facility; notice of intent to apply for permit; fee; site review committee; director; appoint designee.**

(1) Commencing on June 30, 1988, any person who desires a permit for a commercial hazardous waste management facility shall, at least one hundred eighty days prior to making application therefor, file a notice of intent with the director on a form provided by the director. The notice of intent shall include such information as prescribed by the director and shall be accompanied by a fee established by the department in an amount sufficient, but not in excess of the amount necessary, to pay the department for the direct and indirect costs of processing the notice of intent and to pay the costs and expenses specified in section 81-1521.12. Within fifteen days of receipt of a notice of intent, the director shall notify the appropriate local officials and shall establish a specific site review committee. The purpose of establishing the committee shall be to provide for early public involvement in the consideration of a proposed facility.

(2) The director may appoint a designee to carry out duties assigned to the director related to a notice of intent or an application for a permit except the duty to make the decision required by section 81-1521.19. If the applicant is an individual, the application shall include the applicant's social security number.

**Source:** Laws 1987, LB 114, § 3; Laws 1997, LB 752, § 225.

**81-1521.10. Hazardous waste; site review committee; membership.**

(1) The committee shall consist of twelve members, six of whom shall be local members and six of whom shall be regional members.

(2) The six local members shall be chosen as follows:

(a) If the proposed facility will be located within the zoning jurisdiction of a municipality, the chief executive officer of the municipality shall appoint six members who reside within such zoning jurisdiction;

(b) If the proposed facility will be located in an unincorporated area which is within five miles of the zoning jurisdiction of one or more municipalities, the chief executive officer of each such municipality shall appoint a member who resides within the zoning jurisdiction of the respective municipality and the chairperson of the county board of the county in which the facility would be located shall appoint additional members who reside within five miles of the proposed facility for a total of six members; and

(c) If the proposed facility will be located in an unincorporated area which is more than five miles from the zoning jurisdiction of any municipality, the chairperson of the county board of the county in which the facility would be located shall appoint six members who reside within five miles of the proposed facility.

(3) The six regional members shall be appointed by the director to represent various interests affected by a proposed facility and shall include at least one environmental representative, one academic expert, one industry representative, one community planner, one representative of public interest groups, and one representative of the medical community. The regional members shall be appointed for two-year terms and shall serve whenever a committee is needed during that time. Alternates shall be appointed to serve in case a regional member is unable to do so or is already serving on a committee.

**Source:** Laws 1987, LB 114, § 4.

**81-1521.11. Hazardous waste; site review committee; meetings; officers; professional facilitator.**

The director shall organize a meeting of the committee within twenty-one days of the filing of a notice of intent by an applicant. The director shall serve as temporary chairperson of the committee and shall select as a professional facilitator a person trained in group dynamics and objectivity to handle committee meetings with the public and the applicant. At its first meeting, the committee shall select a chairperson and any other officers it deems necessary and shall adopt procedures for gathering information and preparing a report. The committee shall hold factfinding meetings near the proposed site for the facility. The applicant shall make a technical advisor and other resource people available to the committee.

**Source:** Laws 1987, LB 114, § 5.

**81-1521.12. Hazardous waste; department; provide staff; applicant; pay expenses.**

The department shall provide a secretary and other staff persons to assist the committee. The applicant shall pay the expenses for such clerical and other help and the salary of the professional facilitator, shall pay the costs of printing the committee's report, and shall reimburse the committee members for their mileage expenses at the rate provided in section 81-1176 for state employees. The department shall keep a record of all such costs and expenses and assess the applicant for any amount over the estimated amount on which the fee paid by the applicant was based.

**Source:** Laws 1987, LB 114, § 6.

**81-1521.13. Hazardous waste; site review committee; consider factors; enumerated.**

Factors to be considered by the committee shall include, but not be limited to:

(1) Economic considerations such as whether the facility is needed, profit expectations for the facility, how the facility will be operated, effects on the community, the potential for compensation to the local governing body, and aspects related to closure of the facility;

(2) The function of the facility, including the management processes involved, the wastes to be handled, the relationship to any integrated system or master plan for hazardous waste management, and plans for future expansion;

(3) Considerations related to the technology to be used such as why that process was chosen, plans for quality control, reliability of the technology, and the sequence of steps involved from generation of the wastes to postclosure of the facility;

(4) Characteristics of the site for the facility, the methods for determining the characteristics, and why the site was chosen;

(5) Surface drainage, ground water protection, air emissions, and other factors related to environmental quality;

(6) Transportation considerations such as methods to be used, waste containment during transport, party responsible for transport, timing of arrivals, routing, and response plans in case of spills;

(7) Plans for responses to emergencies and for site security, qualifications and training of personnel, and actions to be taken when there are operating problems; and

(8) Enforcement provisions, including applicable regulations, monitoring plans, who is responsible for enforcement, sequence and timing of possible enforcement, and the ability of governmental agencies to ensure compliance.

**Source:** Laws 1987, LB 114, § 7.

**81-1521.14. Hazardous waste; site review committee; issue report; contents.**

The committee shall issue a report no later than one hundred eighty days from the date the notice of intent is filed, except that the deadline may be extended by mutual agreement between the applicant and the committee. The report shall document the discussion of community concerns raised during review by the committee of the proposed commercial hazardous waste management facility, including identification and discussion of the issues which were resolved, the issues which were not resolved, and the questions which were not answered, including the reasons they were not answered.

The report may also include recommendations on the compensation which the applicant should pay or provide to the local governing body. Any recommendations shall be subject to further negotiations between the applicant and the local governing body.

Copies of the report shall be made available to committee members, the department, the applicant, and the public.

After issuance of its report, the committee shall have no further duties, except that the department may ask the committee to review any changes related to the proposed commercial hazardous waste management facility which are proposed by the applicant and to amend its report if appropriate.

**Source:** Laws 1987, LB 114, § 8.

**81-1521.15. Commercial hazardous waste management facility; application for permit.**

At the conclusion of the process involving the committee, the person desiring a permit for a commercial hazardous waste management facility shall make application therefor to the director on a form provided by the director. The application shall contain the name and residence of the applicant, the location of the proposed facility, and such other information as may be necessary and shall be accompanied by a copy of the committee's report and any written response by the applicant to such report.

**Source:** Laws 1980, LB 853, § 8; R.S.1943, (1981), § 81-1521.01; Laws 1987, LB 114, § 9.

**81-1521.16. Commercial hazardous waste management facility; application; hearing by local governing body.**

If the application for a commercial hazardous waste management facility contains all of the information required by the department, the director shall send a copy of the application, of the committee's report, and of any response by the applicant to the report to the county board of the county if the proposed facility will be located outside the zoning jurisdiction of a city or village or to the city council or board of trustees if it will be located within the zoning jurisdiction of a city or village. A hearing shall be held by the county board, city council, or board of trustees within forty-five days of receipt of the copy of the application.

**Source:** Laws 1987, LB 114, § 10.

**81-1521.17. Commercial hazardous waste management facility; notice of hearing; decision by local governing body.**

Before the county board, city council, or board of trustees approves or disapproves a proposed commercial hazardous waste management facility, notice shall be given once at least thirty days but not more than forty days before the hearing and a second time at least ten days before the hearing. Such notice shall be given by publication of a notice in a newspaper either published in or having general circulation in the county, city, or village where the proposed facility is to be located and shall state the time and place of hearing, the name of the applicant for a permit, and the exact location of the proposed facility. In deciding whether to approve or disapprove such facility, the county board, city council, or board of trustees shall determine if such facility will be in compliance with its zoning laws or violate any local ordinances or resolutions. The local governing body shall make its decision within one hundred eighty days of receipt of a copy of the application from the director and shall notify the department and the applicant of its action. If the local governing body disapproves the application, it shall specify its reasons for disapproval. If the local governing body disapproves the application, the department may not take further action on the application unless the disapproval is reversed by court order. For purposes of appeal, the decision of the local governing body to disapprove the application shall be deemed a final order.

**Source:** Laws 1980, LB 853, § 9; R.S.1943, (1981), § 81-1521.02; Laws 1987, LB 114, § 11; Laws 1987, LB 152, § 8.

**81-1521.18. Commercial hazardous waste management facility; appeal of decision.**

The disapproval decision made by the local governing body may be appealed to district court. The court may affirm the decision or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the decision is:

(1) In violation of constitutional provisions;

(2) In excess of the statutory authority or jurisdiction of the local governing body;

(3) Made upon unlawful procedure;

(4) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(5) Arbitrary or capricious.

**Source:** Laws 1987, LB 114, § 12.

**81-1521.19. Commercial hazardous waste management facility; approval; director; duties.**

Following approval action by the local governing body, the director shall determine if the proposed facility complies with the provisions of the Environmental Protection Act and all rules, regulations, and standards promulgated pursuant to such act. The review shall include, but not be limited to, consideration of factors related to air quality, water quality, waste management, and hydrogeology and of the environmental risks and benefits to the vicinity in which the facility would be located. Each person in the department who reviews the application shall prepare and sign a written statement for evaluation by the director who shall decide whether to approve or disapprove the application.

**Source:** Laws 1987, LB 114, § 13.

**81-1521.20. Commercial hazardous waste management facility; publication of notice; additional hearing; permit; issuance; conditions.**

The department shall publish notice of an application for a permit for a commercial hazardous waste management facility, together with the action taken by the local governing body, the director's decision, and whether the permit will be granted or denied, in a legal newspaper either published in or having general circulation in the vicinity affected. A copy of such notice shall also be provided to the applicant. The public may comment or request a public hearing within thirty days after the date such information is made available, and the director may, within his or her discretion, hold a hearing on the granting or denial of the permit if he or she determines that the circumstances justify it.

Prior to issuing the permit, the director shall find that the applicant is a responsible and suitable person to conduct the business and that the proposed facility complies with the provisions specified in section 81-1521.19 and has the requisite approval of the local governing body. Permit conditions established by the department shall supersede any ordinances, resolutions, regulations, or requirements of the local governing body, then or thereafter in effect, which are inconsistent with such conditions.

**Source:** Laws 1980, LB 853, § 10; R.S.1943, (1981), § 81-1521.03; Laws 1987, LB 114, § 14.

**81-1521.21. Commercial hazardous waste management facility; permittee; financial responsibility and insurance.**

As a condition of granting a permit for any commercial hazardous waste management facility, the permittee shall provide proof of financial responsibility pursuant to subdivision (21)(a) of section 81-1505 and liability insurance, including coverage against nonsudden and accidental occurrences, in an amount determined by the director.

**Source:** Laws 1980, LB 853, § 11; Laws 1984, LB 1078, § 6; R.S.Supp.,1986, § 81-1521.04; Laws 1987, LB 114, § 15.

**81-1521.22. Commercial hazardous waste management facility permit; expiration; renewal.**

Permits shall expire five years following the date of issuance but may be renewed if the permittee has complied with the provisions of the Environmental Protection Act and the rules and regulations adopted and promulgated thereunder.

**Source:** Laws 1980, LB 853, § 12; R.S.1943, (1981), § 81-1521.05; Laws 1987, LB 114, § 16; Laws 1987, LB 152, § 9.

**81-1521.23. Commercial hazardous waste management facility permit; revocation; when.**

The director may revoke the permit for a commercial hazardous waste management facility, pursuant to subsection (3) of section 81-1507, if he or she finds that the facility is not being operated in accordance with the Environmental Protection Act and rules and regulations adopted and promulgated thereunder.

**Source:** Laws 1980, LB 853, § 13; R.S.1943, (1981), § 81-1521.06; Laws 1987, LB 114, § 17; Laws 1987, LB 152, § 10.

**81-1522. Repealed. Laws 1992, LB 1257, § 105.**

**81-1523. Accumulation of junk; unlawful.**

It shall be unlawful for any property owner or person in lawful possession of property to allow the accumulation of junk on property that is not purely agricultural in character to the extent that such accumulation is a potential hazard to health.

**Source:** Laws 1971, LB 939, § 23.

**81-1524. Accumulation of junk; investigation; removal; notice.**

The department of health of a city, or the director, as the case may be, shall have the power to investigate all complaints of violations of section 81-1523 and, if either the department or director finds that the property owner or person in lawful possession of the property has allowed an unlawful accumulation of junk, shall give notice to the owner or person in lawful possession of the property by certified or registered mail to remove the accumulation within thirty days.

**Source:** Laws 1971, LB 939, § 24.

**81-1525. Accumulation of junk; failure to remove; violation; penalty.**

Any property owner or person in lawful possession of property who fails or refuses to remove an accumulation of junk as directed by the director pursuant to section 81-1524 shall be guilty of a Class IV misdemeanor.

**Source:** Laws 1971, LB 939, § 25; Laws 1972, LB 1435, § 13; Laws 1977, LB 39, § 305; Laws 2007, LB8, § 1.

**81-1526. Rules and regulations; provisions applicable; exceptions.**

(1) All rules and regulations adopted by the council and all hearings and other proceedings of the director, and judicial review thereof, shall be subject to the provisions of the Administrative Procedure Act.

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

(3) Nothing in the Administrative Procedure Act 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.

**Source:**

Laws 1971, LB 939, § 26; Laws 1974, LB 1029, § 8.

**Cross References**

* Administrative Procedure Act, see section 84-920.

**81-1527. Records and information; confidential use.**

(1) 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 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 the Environmental Protection Act and the Integrated Solid Waste Management Act unless such owner or operator expressly agrees to their publication or availability to the general public, except that emission data obtained under the Clean Air Act, as amended, 42 U.S.C. 7401 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, as amended, shall be available to the public during business hours. 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 as long as such analyses or summaries do not identify any owner or operator or reveal any information otherwise confidential under this section.

(2) The director shall permit the Administrator or Regional Administrator of the Environmental Protection Agency or his or her delegates to inspect the confidential records of the department concerning a given source.

**Source:** Laws 1971, LB 939, § 27; Laws 1972, LB 1435, § 14; Laws 1974, LB 1029, § 9; Laws 1984, LB 1078, § 7; Laws 1992, LB 1257, § 90.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.

**81-1528. Act; political subdivision exempt; when; council; rules and regulations.**

(1) The Environmental Protection Act shall not apply in any political subdivision which provides for the control of air, water, or land pollution by resolution, ordinance, or regulation not inconsistent with the substantive provisions of the Environmental Protection Act or any rule or regulation adopted pursuant to such act, except that no such resolution, ordinance, or regulation shall become effective until a certificate of exemption has been issued by the director. Such certificate of exemption shall be available for inspection in the office of the county, city, or village clerk as the case may be.

(2) If the director determines at any time after the issuance of such a certificate that a resolution, ordinance, or regulation is being enforced in a manner inconsistent with the Environmental Protection Act or any rule or regulation adopted pursuant to such act in any political subdivision holding a certificate of exemption, the director may suspend the certificate of exemption and the Environmental Protection Act shall apply in such political subdivision until such standards are met and a new certificate is issued.

(3) Any political subdivision desiring a certificate of exemption shall make application for such certificate by filing a petition for certificate of exemption with the director. The director or his or her designated representative shall promptly investigate such petition. If the recommendation of the director or his or her designated representative is against the granting of a certificate of exemption and he or she, in his or her discretion, concludes that a hearing would be advisable, a hearing shall be held as provided in section 81-1507 on the questions of whether the resolution, ordinance, or regulation is consistent with the substantive provisions of the Environmental Protection Act or any rule or regulation adopted pursuant to such act and whether adequate provisions have been made for enforcement. The burden of proof shall be upon the political subdivision. A like hearing shall be held upon any proposed suspension of a certificate of exemption.

(4) If the director finds that the location, character, or extent of particular concentrations of population, air, water, or land contaminant sources, the geographic, topographic, or meteorological considerations, or any combination thereof are such as to make impracticable the maintenance of appropriate levels of air, water, or land quality without an areawide air, water, or land pollution control program, the director may determine the boundaries within which such program is necessary and require it as the only acceptable alternative to direct state administration.

(5) Nothing in the Environmental Protection Act shall be construed to supersede or oust the jurisdiction of any local air, water, or land pollution control program in operation on May 26, 1971. Such program shall meet all requirements of the Environmental Protection Act for a local air, water, or land pollution control program. Any approval required from the department shall be deemed granted unless the department takes specific action to the contrary.

(6) Until October 1, 1993, cities of the second class and villages shall be exempt from the provisions of the Environmental Protection Act and the Integrated Solid Waste Management Act pertaining to permits for and control of nonhazardous solid waste disposal systems if such cities and villages provide solid waste disposal systems which do not result in the pollution of waters of the state. The department shall act in an advisory capacity to such cities and villages and shall have the right to inspect solid waste disposal sites and evaluate them according to the site evaluation criteria promulgated pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq. The department shall notify the community of the results of its evaluation.

(7) The council shall, by July 1, 1992, adopt and promulgate rules and regulations which provide standards for the closure and postclosure care of all landfills, including landfills previously exempted under this section.

**Source:** Laws 1971, LB 939, § 28; Laws 1972, LB 1435, § 15; Laws 1980, LB 853, § 7; Laws 1984, LB 1078, § 8; Laws 1991, LB 67, § 2; Laws 1992, LB 1257, § 91.

**Cross References**

* **Integrated Solid Waste Management Act,** see section 13-2001.

**81-1528.01. Repealed. Laws 1986, LB 491, § 40.**

**81-1529. Act, how construed.**

Nothing in the Environmental Protection Act shall be construed to:

(1) Grant to the department any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works, or shops or private property appurtenant thereto;

(2) Affect the relations between employers and employees with respect to or arising out of any condition of air contamination or air pollution; or

(3) Supersede or limit the applicability of any law or ordinance relating to sanitation, industrial health, or safety.

**Source:** Laws 1971, LB 939, § 29; Laws 1987, LB 152, § 11.

**81-1530. Repealed. Laws 1987, LB 152, § 12.**

**81-1531. Repealed. Laws 1974, LB 1029, § 10.**

**81-1531.01. Act, how construed.**

Nothing in the Environmental Protection Act shall be construed to apply to any wells or holes covered by sections 57-901 to 57-922.

**Source:** Laws 1983, LB 356, § 10.

**81-1531.02. Uranium mining; department; regulatory duties; prohibited methods; enforcement.**

(1) The department shall recommend an appropriate regulatory policy for controlling uranium mining to be presented to the council and the Legislature by January 1, 1986. The department shall evaluate all reasonable regulatory options for addressing the impacts on air, land, and water quality of uranium mining by methods other than mineral production and injection wells which are presently regulated. The department shall examine and consider regulatory programs created by other states and the federal government, their applicability to Nebraska, and their success in the states or areas where they are used and shall consider, but not be limited to, the following policy options:

(a) The development of uranium surface and shaft mining regulations;

(b) The development of regulations addressing appropriate development, mitigation, or reclamation standards for uranium mining or uranium mining-related activities;

(c) The appropriateness of developing regulations addressing ground or surface water use standards for uranium mining or uranium mining-related activities as a means of limiting the impact of uranium mining on land and water resources; and

(d) The use of any other existing state regulatory programs to control or regulate the impacts of uranium mining on land and water resources.

(2) The department shall perform the evaluation in cooperation with other state agencies which have or could have a role in regulating the impacts of uranium mining on Nebraska's people and resources or in controlling other uranium mining activities. The department shall also create a citizen advisory panel, of interested or affected parties, which shall be consulted for its input and opinion on the results of the evaluation of regulatory options.

(3) Uranium mining by any method other than mineral production and injection wells shall be prohibited until legislation is passed authorizing the department to regulate such mining activities. It is the intent of the Legislature that uranium mining shall be regulated by the department. Upon receipt of evidence that uranium mining by any method other than by mineral production and injection wells or related activities are presenting or are likely to present an imminent and substantial threat to the environment, the director shall petition the district court for an injunction to immediately restrain any person from contributing to the alleged acts or to require any person to stop such acts or to take such other action as may be necessary. It shall be the duty of each county attorney or the Attorney General to whom the director reports a violation to cause appropriate proceedings to be instituted without delay to assure compliance with this section.

**Source:** Laws 1983, LB 356, § 11; Laws 1984, LB 742, § 2; Laws 1986, LB 1008, § 3.

**81-1532. Act, how cited.**

Sections 81-1501 to 81-1532 shall be known and may be cited as the Environmental Protection Act.

**Source:** Laws 1971, LB 939, § 32; Laws 1983, LB 356, § 12; Laws 1987, LB 114, § 18; Laws 1991, LB 528, § 2; Laws 1992, LB 1257, § 92; Laws 1994, LB 570, § 12; Laws 1998, LB 1209, § 30; Laws 2000, LB 1234, § 13; Laws 2001, LB 461, § 8; Laws 2004, LB 449, § 3.

Garbage Disposal

**19-2101. Garbage disposal plants, systems and solid waste disposal areas; construction and maintenance; acquisition; eminent domain.**

Cities of the first class, cities of the second class and villages shall have the power to purchase, construct, maintain and improve garbage disposal plants, systems or solid waste disposal areas, and purchase equipment for the operation thereof, for the use of their respective municipalities and the inhabitants thereof, and are hereby authorized and empowered to lease or to take land in fee within their corporate limits or without their corporate limits by donation, gift, devise, purchase or appropriation for rights-of-way and for construction and operation of such a disposal plant, system or solid waste disposal area.

**Source: Laws** 1947, c. 54, § 1, p. 183; Laws 1961, c. 60, § 1, p. 219; Laws 1969, c. 117, § 1, p. 533.

**19-2102. Garbage disposal plants, systems and solid waste disposal areas; tax; when authorized.**

The cost thereof may be defrayed by the levy of a tax not to exceed ten and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such city or village in any one year or, when such tax is insufficient for such purpose, by the issuance of bonds of the municipality.

**Source: Laws** 1947, c. 54, § 2, p. 183; Laws 1953, c. 287, § 37, p. 952; Laws 1979, LB 187, § 83; Laws 1992, LB 719A, § 84.

**19-2103. Garbage disposal plants, systems and solid waste disposal areas; issuance of bonds; limitation on amount.**

The question of issuing bonds for the purpose herein contemplated shall be submitted to the electors at any election held for that purpose, after not less than thirty days' notice thereof shall have been given by publication in some newspaper published and of general circulation in such municipality or, if no newspaper is published therein, then by posting in five or more public places therein. Such bonds may be issued only when a majority of the electors voting on the question approve their issuance. The bonds shall bear interest payable annually or semiannually, and shall be payable at any time the municipality may determine at the time of their issuance, but in not more than twenty years after their issuance. The aggregate amount of bonds that may be issued for the construction, installation or purchase of a garbage disposal plant, system or solid waste disposal area shall not exceed five percent of the taxable value of the property within such municipality as shown by the last annual assessment.

**Source: Laws** 1947, c. 54, § 3, p. 183; Laws 1969, c. 117, § 2, p. 534; Laws 1969, c. 51, § 74, p. 321.

**19-2104. Garbage disposal plants, systems and solid waste disposal areas; tax levy to pay bonds.**

The council or board shall levy annually a sufficient tax to maintain and operate such system, plant or solid waste disposal area and to provide for the payment of the interest on and principal of any bonds that may have been issued as herein provided.

**Source: Laws** 1947, c. 54, § 4, p. 184; Laws 1969, c. 117, § 3, p. 534.

**19-2105. Garbage disposal plants, systems and solid waste disposal areas; contracts.**

The council or board of such municipality may also make and enter into a contract or contracts with any person, firm or corporation for the construction, maintenance or operation of a garbage disposal plant, system or solid waste disposal area.

**Source:** Laws 1947, c. 54, § 5, p. 184; Laws 1969, c. 117, § 4, p. 535.

**19-2106. Garbage disposal; management and operation; rates and charges; collections; penalties.**

When such system shall have been established, the municipality may provide by ordinance for the management and operation thereof, the rates to be charged for such service, including collection and disposal, the manner of payment and collection thereof and prescribe penalties for the violation of such ordinance, and do whatever is necessary to protect the general health in the matter of removal and disposal of garbage.

**Source:** Laws 1947, c. 54, § 6, p. 184; Laws 1972, LB 893, § 1.

**19-2107. Repealed. Laws 1992, LB 1257, § 105.**

**19-2108. Repealed. Laws 1981, LB 497, § 1.**

**19-2109. Repealed. Laws 1981, LB 497, § 1.**

**19-2110. Repealed. Laws 1981, LB 497, § 1.**

**19-2111. Garbage disposal; construction of section; existing facilities; zoning.**

Nothing in section 19-2101 shall be construed so as to apply to or affect existing garbage disposal facilities or existing county zoning.

**Source:** Laws 1961, c. 60, § 6, p. 221; Laws 1992, LB 1257, § 66.

Integrated Solid Waste Management Act

**13-2001. Act, how cited.**

Sections 13-2001 to 13-2043 shall be known and may be cited as the Integrated Solid Waste Management Act.

**Source: Laws** 1992, LB 1257, § 1; Laws 1994, LB 1207, § 1; Laws 2003, LB 143, § 1; Laws 2008, LB202, § 1.

**13-2002. Legislative findings and declarations.**

The Legislature hereby finds and declares that:

(1) The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant threat to the ground water supply. In addition, the nature of the waste and the disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition;

(2) Wastes filling Nebraska's landfills may at best represent a potential resource, but without proper management wastes are hazards to the environment and to the public health and welfare;

(3) The growing concern with ground water protection and the desire to avoid financial risks inherent in ground water contamination has caused many smaller landfills to close in favor of using higher-volume facilities. Larger operations allow for better ground water protection at a relatively lower and more manageable cost;

(4) The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to landfills and increase the supply of reusable materials for the use of the public;

(5) Local governments are currently authorized to provide solid waste management services. As a group, counties and municipalities are best positioned to develop efficient solid waste management programs;

(6) An assignment of responsibility for integrated solid waste management should not prohibit governmental entities from procuring services from other units of governments or from private persons. It is the intent of the Legislature that natural resources districts, interlocal cooperative entities, tribal governments, and other statutory and voluntary regional organizations be encouraged to cooperatively provide financing or services to governmental entities responsible for solid waste management; and

(7) A variety of benefits results from a policy of integrated solid waste management, including the following environmental, economic, governmental, and public benefits:

(a) Not producing waste in the first instance is the most certain means for avoiding the widely recognized health and environmental damage associated with waste. Although waste reduction will never eliminate all wastes, to the extent that waste reduction is achieved it results in the most certain form of direct risk reduction;

(b) The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly governmental actions; and

(c) Public confidence in environmental policies of the government is important for the effectiveness of these policies. Waste reduction and recycling pose no adverse environmental and public health effects and do not therefor lead to increased public concern. Waste reduction and recycling also increase the public confidence that government and industry are doing all that is possible to protect the environment and the public health and welfare.

**Source: Laws** 1992, LB 1257, § 2.

**13-2003. Definitions, where found.**

For purposes of the Integrated Solid Waste Management Act, the definitions found in sections 13-2004 to 13-2016.01 shall be used.

**Source: Laws** 1992, LB 1257, § 3; Laws 1994, LB 1207, § 4; Laws 2003, LB 143, § 2.

**13-2004. Agency, defined.**

Agency shall mean any combination of two or more municipalities or counties acting together under the Interlocal Cooperation Act or the Joint Public Agency Act, a natural resources district acting alone or together with one or more counties and municipalities under either of such acts, any joint entity as defined in section 13-803, or any joint public agency as defined in section 13-2503.

**Source: Laws** 1992, LB 1257, § 4; Laws 1999, LB 87, § 56.

**Cross References**

* **Interlocal Cooperation Act,** see section 13-801.
* **Joint Public Agency Act,** see section 13-2501.

**13-2005. Council, defined.**

Council shall mean the Environmental Quality Council.

**Source: Laws** 1992, LB 1257, § 5.

**13-2006. County, defined.**

County shall mean any county in the State of Nebraska.

**Source: Laws** 1992, LB 1257, § 6.

**13-2007. County solid waste jurisdiction area, defined.**

County solid waste jurisdiction area shall mean all areas of a county not located within the corporate limits of a municipality except a facility which does not serve unincorporated areas of the county.

**Source: Laws** 1992, LB 1257, § 7.

**13-2008. Department, defined.**

Department shall mean the Department of Environmental Quality.

**Source: Laws** 1992, LB 1257, § 8.

**13-2009. Director, defined.**

Director shall mean the Director of Environmental Quality.

**Source: Laws** 1992, LB 1257, § 9.

**13-2010. Facility, defined.**

Facility shall mean any site owned and operated or utilized by any person for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste and shall include a solid waste landfill.

**Source: Laws** 1992, LB 1257, § 10.

**13-2011. Integrated solid waste management, defined.**

Integrated solid waste management shall mean solid waste management which is focused on planned development of programs and facilities that reduce waste toxicity and volume, recycle marketable materials, and provide for safe disposal of residuals.

**Source: Laws** 1992, LB 1257, § 11.

**13-2012. Municipal solid waste jurisdiction area, defined.**

Municipal solid waste jurisdiction area shall mean all the incorporated areas of a city or of a village.

**Source: Laws** 1992, LB 1257, § 12.

**13-2013. Municipality, defined.**

Municipality shall mean any city or village incorporated under the laws of this state.

**Source: Laws** 1992, LB 1257, § 13.

**13-2013.01. Passenger tire equivalent of waste tires, defined.**

Passenger tire equivalent of waste tires means twenty pounds of waste tire or processed waste tire.

**Source: Laws** 2003, LB 143, § 3.

**13-2013.02. Scrap tire or waste tire, defined.**

Scrap tire or waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

**Source: Laws** 2003, LB 143, § 4.

**13-2014. Solid waste, defined.**

Solid waste shall have the definition found in section 81-1502.

**Source: Laws** 1992, LB 1257, § 14.

**13-2015. Solid waste management plan, defined.**

Solid waste management plan shall mean a plan adopted by a county or municipality, including a joint plan adopted by an agency, for integrated solid waste management.

**Source: Laws** 1992, LB 1257, § 15.

**13-2016. System, defined.**

System shall mean any equipment, vehicles, facilities, personnel, or contractors utilized for the purpose of collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste.

**Source: Laws** 1992, LB 1257, § 16.

**13-2016.01. Yard waste, defined.**

Yard waste shall mean grass and leaves.

**Source: Laws** 1994, LB 1207, § 5.

**13-2017. Policy of the state.**

It is the policy of this state:

(1) To encourage the development of integrated solid waste management programs, including waste volume reduction and recycling programs and education, at the local governmental level through incentives, technical assistance, grants, and other practical measures;

(2) To support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development in Nebraska of businesses relating to waste reduction and recycling;

(3) To provide education concerning the components of integrated solid waste management, at the elementary level through the high school level and through community organizations, to enhance the success of local programs requiring public involvement; and

(4) To support and encourage manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound and which enhance waste reduction by creating products which have longer usage life and which are adaptable to secondary uses, require less input material, and decrease resource consumption.

**Source: Laws** 1992, LB 1257, § 17.

**13-2018. Solid waste management hierarchy; established; cooperative program; established.**

(1) An effective and efficient program of integrated solid waste management protects the environment and the public and provides the most practical and beneficial use of the solid waste material. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following solid waste management hierarchy, in descending order of preference, is established as the integrated solid waste management policy of the state:

(a) Volume reduction at the source;

(b) Recycling, reuse, and vegetative waste composting;

(c) Land disposal;

(d) Incineration with energy resource recovery; and

(e) Incineration for volume reduction.

(2) In the implementation of the integrated solid waste management policy, the state shall establish and maintain a cooperative state and local program of project planning and technical assistance to encourage integrated solid waste management.

**Source: Laws** 1992, LB 1257, § 18.

**13-2019. Tribal governments; assume responsibility for integrated solid waste management; department; duties.**

Because of the rights of both tribal sovereignty and Nebraska citizenship of individuals under the jurisdiction of federally recognized tribal governments, such tribal governments are recognized as localities which can assume responsibility for integrated solid waste management. The department shall present the state's comprehensive solid waste management plan completed pursuant to section 81-15,166 to the federally recognized tribal governments in Nebraska and encourage such tribes to adopt the state's laws, rules, regulations, and standards for integrated solid waste management.

**Source: Laws** 1992, LB 1257, § 19.

**13-2020. County, municipality, or agency; provide or contract for disposal of solid waste; joint ownership of facility; governing body; powers and duties; rates and charges.**

(1) Effective October 1, 1993, each county and municipality shall provide or contract for facilities and systems as necessary for the safe and sanitary disposal of solid waste generated within its solid waste jurisdiction area. Such disposal shall comply with rules and regulations adopted and promulgated by the council for integrated solid waste management programs.

(2) A county, municipality, or agency may jointly own, operate, or own and operate with any person any facility or system and may enter into cooperative agreements as necessary and appropriate for the ownership, operation, or ownership and operation of any facility or system.

(3) A county, municipality, or agency may, either alone or in combination with any other county, municipality, or agency, contract with any person to provide any service, facility, or system required by the Integrated Solid Waste Management Act.

(4) The governing body of a county, municipality, or agency may make all necessary rules and regulations governing the use, operation, and control of a facility or system. Such governing body may establish just and equitable rates or charges to be paid to it for the use of such facility or system by each person whose premises are served by the facility or system, including charges for late payments, except that no city of the metropolitan class shall impose any rate or charge upon individual residences unless a majority of those voting in a regular or special election vote affirmatively to approve or authorize establishment of such a rate or charge. For purposes of the charges authorized by this section, the premises are served if solid waste collection service is available to the premises or if a community solid waste drop-off location is provided, unless the person who would otherwise be subject to such rates or charges proves to the governing body of the county, municipality, or agency that his or her solid waste was lawfully collected and hauled to a permitted facility. Such proof shall be provided by a receipt from a permitted facility, a statement from a licensed hauler, or other documentation acceptable to the governing body of the county, municipality, or agency. If the service charge so established is not paid when due, such sum may be recovered by the county, municipality, or agency in a civil action or, following notice by regular United States mail to the last-known address of the property owner of record and an opportunity for a hearing, may be certified by the governing body of the county, municipality, or agency to the county treasurer and assessed against the premises served and collected or returned in the same manner as other taxes are certified, assessed, collected, and returned.

(5) If the county, municipality, or agency enters into a contract with a person to provide a facility or system, such contract may authorize the person to charge the owners of premises served such a service rate therefor as the governing body determines to be just and reasonable or the county, municipality, or agency may pay therefor out of its general fund or the proceeds of any tax levy applicable to the purposes of such contract or assess the owners of the premises served a reasonable charge therefor to be collected as provided in this section and paid into a fund to be used to defray such contract charges.

**Source: Laws** 1992, LB 1257, § 20; Laws 1997, LB 495, § 1.

**13-2020.01. Imposition of lien for nonpayment of rates and charges; vote required.**

(1) For purposes of this section, elected official means a mayor or a member of a city council, village board of trustees, or county board.

(2) Beginning August 1, 2008, only elected officials who are members or alternate members of the governing body of a joint entity or joint public agency created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act that provides services under the Integrated Solid Waste Management Act are authorized to vote on whether a lien should be imposed on real property for nonpayment of rates and charges under subsection (4) of section 13-2020. Notwithstanding any other requirements for action by the governing body, a vote in favor of imposing such a lien by a majority of the members eligible to vote on whether a lien should be imposed is required to impose such a lien.

**Source: Laws** 2008, LB202, § 2.

**Cross References**

* **Interlocal Cooperation Act,** see section 13-801.
* **Joint Public Agency Act,** see section 13-2501.

**13-2021. County, municipality, or agency; facility or system; powers and duties; referendum and limited referendum provisions; applicability.**

A county, municipality, or agency may purchase, plan, develop, construct, equip, maintain, and improve facilities and systems and may lease or acquire land in fee by gift, grant, purchase, or condemnation as necessary for the construction and operation of a facility or system. A county, municipality, or agency may also make and enter into contracts with any person for the planning, development, construction, maintenance, or operation of such facility or system or any part thereof. Measures adopted or enacted by municipalities with respect to any facility or system shall constitute measures subject to limited referendum under subsection (2) of section 18-2528, and a municipality shall be authorized to exempt all subsequent measures relating to the same project from referendum and limited referendum as provided under subsection (4) of such section.

**Source: Laws** 1992, LB 1257, § 21.

**13-2022. County, municipality, or agency; closure of facility, postclosure care, and investigative and corrective action; powers and duties; tax; special trust funds.**

A county, municipality, or agency shall close a facility, provide postclosure care, and undertake investigative and corrective action in accordance with rules and regulations adopted by the council. The costs associated with or reasonably anticipated for such closure, postclosure care, and investigative and corrective action may be included within the rates and charges authorized by section 13-2020 and within the amounts payable under service agreements adopted pursuant to section 13-2024.

Every county, municipality, and agency may approve, execute, and deliver contractual agreements to assume financial responsibility for the payment of costs of closure, postclosure care, or investigative or corrective action with respect to any facility. Such agreements may provide for a binding general obligation of such county, municipality, or agency obligating payments in future years.

For the payment or performance of the terms of any such agreement, any county or municipality may agree to levy or cause to be levied an annual tax upon the taxable property within such county or municipality in an amount sufficient for such purposes. Any such tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

Every county, municipality, and agency may also approve, execute, and deliver one or more trust agreements, with any bank having trust powers or a trust company, providing for the creation of one or more special trust funds to provide for the payment of costs of closure, postclosure care, or investigative or corrective action.

No county, municipality, or agency shall be required to provide proof of financial responsibility to obtain or renew a permit for a facility which is not used for disposal of solid waste.

**Source: Laws** 1992, LB 1257, § 22; Laws 1994, LB 1207, § 6.

**13-2023. County, municipality, or agency; regulations authorized; limitations; noncompliance fee.**

A county, municipality, or agency may, by ordinance or resolution, adopt regulations governing collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste within its solid waste jurisdiction area as necessary to protect the public health and welfare and the environment. Regulations authorized by this section shall be equal to or more stringent than the provisions of the Integrated Solid Waste Management Act and rules and regulations adopted and promulgated by the council as authorized by the act. Any person who violates any such regulation shall be subject to a noncompliance fee not to exceed five hundred dollars.

**Source: Laws** 1992, LB 1257, § 23.

**13-2024. County or municipality; service agreement with agency; authorized provisions; special tax authorized.**

Notwithstanding any other provision of Nebraska law, any county or municipality may enter into a service agreement with an agency which owns and operates or proposes to own and operate any solid waste management facility or system for obtaining solid waste management services from such agency. Any such service agreement may provide for the following:

(1) The payment of fixed or variable periodic amounts for service or the right to obtain service;

(2) That such service agreement may extend for a term of years as determined by the governing body of the county or municipality and be binding upon such county or municipality over such term of years;

(3) That variable or fixed amounts payable under such contracts may be determined based upon one or more of the following factors:

(a) Operating and maintenance expenses of the agency, including contract renewal and replacement for plant and equipment;

(b) Amounts payable by the agency with respect to debt service on its bonds or other obligations, including margins of coverage if deemed appropriate; and

(c) Amounts necessary for the agency to build or maintain operating reserves, capital reserves, and debt service reserves;

(4) That any such service agreement may require payment to be made in the agreed fixed or variable amounts irrespective of whether such facility or system is completed or operational and notwithstanding any suspension, interruption, interference, reduction, or curtailment of the services of such facility or system; and

(5) Such other provisions as the agency and county or municipality deem appropriate in connection with providing and obtaining solid waste management services.

In order to provide for the payments due under any such service agreement, any county or municipality may pledge the revenue received from any and all rates and charges received or to be received from provision of solid waste management services or from contracts with any other persons or entities, private or public, and may further provide, if determined appropriate by the governing body, that any deficiency in such revenue may be made up from a special tax levied for such purpose upon all taxable property within such county or municipality, which special tax shall for all purposes of Nebraska law, including limitations upon budget, revenue, and expenditures of public funds, have the same status as a tax levied for the purpose of paying the bonded indebtedness of such county or municipality.

**Source: Laws** 1992, LB 1257, § 24.

**13-2025. County, municipality, or agency; service agreement; fees and charges; amount.**

Any county, municipality, or agency entering into any service agreement under section 13-2024 shall fix, maintain, revise, and collect fees, rates, rents, and charges for functions, services, facilities, or commodities furnished to its customers and users by and through its system as will be sufficient to:

(1) Pay (a) the cost of operating and maintaining the system and renewals or replacements thereto, including all amounts due and payable under such service agreement, and (b) the interest on and principal of any outstanding bonds or other indebtedness of the county, municipality, or agency relative to the service agreement, whether at maturity or upon sinking-fund redemption, which are payable from the revenue of its system; and

(2) Provide, as may be required by any resolution, ordinance, trust indenture, security instrument, or other agreement of the agency, for any reasonable reserves for such operating and maintenance expenses and for any margins or coverages over and above debt service.

**Source: Laws** 1992, LB 1257, § 25.

**13-2025.01. Joint entity or joint public agency; reporting of budget; filing required.**

Any joint entity or joint public agency created to fulfill the purposes of the Integrated Solid Waste Management Act pursuant to the Interlocal Cooperation Act or Joint Public Agency Act shall comply with the Municipal Proprietary Function Act for purposes of reporting its budgets. Proprietary budget statements for the joint entity or joint public agency shall be placed on file with the office of the municipal clerk of each member which is a municipality as required by the Municipal Proprietary Function Act and with the county clerk of each member which is a county.

**Source: Laws** 1994, LB 1207, § 2; Laws 1999, LB 87, § 57.

**Cross References**

* **Interlocal Cooperation Act,** see section 13-801.
* **Joint Public Agency Act,** see section 13-2501.
* **Municipal Proprietary Function Act,** see section 18-2801.

**13-2026. Municipalities, counties, and agencies; regulate solid waste management; when.**

In furtherance of the policy of the state as set forth in the Integrated Solid Waste Management Act, municipalities, counties, and agencies may by ordinance or resolution adopt rules and regulations or may adopt bylaws or enter into written agreements between and among themselves or other persons which regulate and govern solid waste management within their solid waste jurisdiction areas, including the establishment of conditions to assure that a specified amount and type of solid waste will be delivered to a specific facility.

**Source: Laws** 1984, LB 911, § 2; R.S.1943, (1987), § 81-1572; Laws 1992, LB 1257, § 26.

**13-2027. Municipalities, counties, and agencies; regulation of competition and antitrust; exemption.**

In exercising the powers granted in the Integrated Solid Waste Management Act, municipalities, counties, and agencies shall be exempt from all rules and regulations of state regulatory competition. It is intended that municipalities, counties, or agencies carrying out the activities described in the act receive full exemption and immunity from state and federal antitrust laws in light of the public purpose and regulatory provisions provided by the act. The exemption granted pursuant to this section shall not be construed to diminish any other exemption for similar activities authorized through grants of authority to other public bodies even though such exemption may not be stated in terms of antitrust.

**Source: Laws** 1984, LB 911, § 3; R.S.1943, (1987), § 81-1573; Laws 1992, LB 1257, § 27.

**13-2028. Exemption; limitation.**

The exemption granted under section 13-2027 shall not constitute a waiver of or exemption from the bidding provisions of sections 16-321 and 17-568.01 or any other similar provision.

**Source: Laws** 1984, LB 911, § 4; R.S.1943, (1987), § 81-1574; Laws 1992, LB 1257, § 28.

**13-2029. Counties and municipalities; statement of intent; filings; failure to file; effect.**

On or before October 1, 1992, each county and municipality shall file a statement of intent with the department describing the way in which it intends to fulfill its responsibility for integrated solid waste management. If a municipality or county intends to enter into a cooperative relationship with another entity to fulfill such responsibility, documentation of the reciprocal intent of those entities shall be included with the statement. If no statement of intent is filed by a municipality or county, the responsibility for integrated solid waste management shall remain with the nonfiling county or municipality.

**Source: Laws** 1992, LB 1257, § 29.

**13-2030. Counties and municipalities; certification of facility and system capacity; filing required; department; approval; restrict access to facilities and systems; when.**

On or before October 1, 1993, a certification shall be filed with the department on behalf of each county and municipality with respect to (1) facility and system capacity for solid waste management for the solid waste generated within each solid waste jurisdiction area and (2) facility and system capacity for solid waste generated outside of each solid waste jurisdiction area and disposed of in facilities within each solid waste jurisdiction area. If a county or municipality is unable to certify capacity for waste generated outside its solid waste jurisdiction area, it may restrict access to its facilities and systems for such solid waste. Such certification shall be approved by the department if it is found to be in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted under the act.

**Source: Laws** 1992, LB 1257, § 30.

**13-2031. Integrated solid waste management plan; filing; approval.**

On or before October 1, 1994, an integrated solid waste management plan shall be filed with the department on behalf of each county and municipality. Such plan shall be approved by the department if it is found to be in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted under the act.

**Source: Laws** 1992, LB 1257, § 31.

**13-2032. Integrated solid waste management plan; minimum requirements; waste reduction and recycling program; priorities; updated plan.**

(1) Each integrated solid waste management plan filed pursuant to section 13-2031 shall at a minimum:

(a) Certify facility and system capacity for solid waste management for the solid waste generated within each solid waste jurisdiction area for the twenty years following October 1, 1994;

(b) Certify facility and system capacity for solid waste generated outside of each solid waste jurisdiction area and disposed of in facilities within each solid waste jurisdiction area for the twenty years following October 1, 1994. If a county or municipality is unable to certify capacity for waste generated outside its solid waste jurisdiction area, it may restrict access to its facilities and systems for such solid waste;

(c) Incorporate and reflect the waste management hierarchy of the state integrated solid waste management policy;

(d) State the extent to which solid waste generated within the area covered by the plan is or can be recycled;

(e) State the economic and technical feasibility of using other existing disposal facilities in lieu of initiating new disposal facilities or of continuing the use of disposal facilities in use at the time the plan is filed;

(f) State the expected environmental impact of alternative solid waste disposal methods, including the use of landfills;

(g) State a specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact; and

(h) State such additional information, data, and studies as may be required pursuant to rules and regulations adopted by the council.

(2) The integrated solid waste management plan shall provide for a local waste reduction and recycling program. If technically and economically feasible, the volume of materials disposed of in landfills as of July 1, 1994, shall be reduced by twenty-five percent as of July 1, 1996, by forty percent as of July 1, 1999, and by fifty percent as of July 1, 2002. Any county, municipality, or agency which had in effect a recycling or waste reduction program prior to July 1, 1994, shall be credited with the waste-stream reduction achieved prior to July 1, 1994, with respect to the July 1, 1996, goal. The following wastes shall be given first priority when developing reduction and recycling programs and related timetables in relation to an integrated solid waste management plan:

(a) Yard wastes;

(b) Unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act;

(c) Discarded tires;

(d) Waste oil;

(e) Lead-acid batteries; and

(f) Discarded household appliances.

In addition, such plan shall provide a methodology for implementing a program of separation of wastes, including, but not limited to, glass, plastic, paper, and metal.

(3) The solid waste management plan shall be updated for compliance with federal and state laws and regulations as required by the department and may be updated, subject to approval by the department, at any time to reflect local needs and conditions.

**Source: Laws** 1992, LB 1257, § 32.

**Cross References**

* **Environmental Protection Act,** see section 81-1532.

**13-2033. Dumping or depositing solid waste; permit; council; powers and duties; exemptions; storage of passenger tire equivalents of waste tires; access to property.**

(1) Except as provided in subsections (2) and (3) of this section, no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility. The council may adopt and promulgate rules and regulations regarding the permitting of this activity, which rules and regulations shall protect the public interest but may be based upon criteria less stringent than those regulating a landfill. The council may adopt and promulgate rules and regulations defining beneficial reuse and establishing construction standards and other criteria exempting from permit requirements under this section the following: (a) The use of dirt, stone, brick, or some inorganic compound for landfill, landscaping excavation, or grading purposes; (b) the placement of tires, posts, or ferrous objects, not contaminated with other wastes, for agricultural uses, such as bumpers on agricultural equipment, for ballast to maintain covers or structures on the agricultural site, for blowout stabilization, for fish habitat, or for tire mats for bank stabilization; or (c) such other waste placement or depositing activities that are found not to pose a threat to the public health or welfare. In developing construction standards, the council shall consider standards and practices established by the American Society for Testing and Materials.

(2) No person shall be found to be in violation of this section if (a) the solid waste generated by an individual is disposed of on such individual's property, (b) such property is outside the corporate limits of a municipality, and (c) the department determines that the county has not provided integrated solid waste management facilities for its residents.

(3) No person shall be found to be in violation of this section for storing five hundred or fewer passenger tire equivalents of waste tires. Storage of passenger tire equivalents of waste tires for more than one year without reuse, recycling, or shipment out of state is presumed to constitute disposal of solid waste under subsection (1) of this section. Speculative accumulation of more than five hundred passenger tire equivalents of waste tires shall be deemed disposal of solid waste and is prohibited. Tires are not accumulated speculatively if, in a calendar year beginning on January 1, the amount of tire material that is reused or recycled by weight equals at least seventy-five percent of such material at the beginning of the year. The burden of proof that passenger tire equivalents of waste tires have not been speculatively accumulated rests with the person accumulating the passenger tire equivalents of waste tires to demonstrate through written documentation that the passenger tire equivalents of waste tires have not been accumulated speculatively. Any person, business, or other entity engaged in the business of picking up, hauling, and transporting scrap tires for storage, processing, or recycling shall obtain a permit from the department before engaging in such activity. The council may adopt rules and regulations regarding such permits and may exempt from permit requirements those entities having involvement with scrap tires which is incidental to their primary business activity. Persons holding a permit on August 31, 2003, may continue to operate under such permits until new rules and regulations are established under this section. As a condition for obtaining a permit under this section, the department shall require the permittee to provide the department with an annual report indicating the number of scrap tires hauled, the location of the delivery of such scrap tires, and any additional information the council believes necessary to accomplish the purposes of the Integrated Solid Waste Management Act.

(4) If necessary in the course of an investigation or inspection or during remedial or corrective action and if the owner of the subject property or the owner's agent has specifically denied access to the department for such purposes, the director may order the owner or owner's agent to grant access to such property for the performance of reasonable steps to determine the source and extent of contamination, for remediation, or for other corrective action, including drilling and removal of wastes. Access shall be by the department or by a person conducting the investigation, inspection, or remedial action at the direction of the department. The property shall be restored as nearly as possible to its original condition at the conclusion of the investigation, inspection, or remedial action.

**Source: Laws** 1992, LB 1257, § 33; Laws 2003, LB 142, § 1; Laws 2003, LB 143, § 5.

**13-2034. Rules and regulations.**

The council shall adopt and promulgate rules and regulations which shall include the following:

(1) A permit program for facilities providing for permits to be issued to owners and operators;

(2) Requirements for the collection, source separation, storage, transportation, transfer, processing, recycling, resource recovery, treatment, and disposal of solid wastes as well as developmental and operational plans for facilities. Regulations concerning operations may include waste characterization, composition, and source identification, site improvements, air and methane gas monitoring, ground water and surface water monitoring, daily cover, insect and rodent control, salvage operations, waste tire disposal, safety and restricted access, inspection of loads and any other necessary inspection or verification requirements, reporting of monitoring analysis, record-keeping requirements and other reporting requirements, handling and disposal of wastes with special characteristics, and any other operational criteria, location criteria, or design criteria necessary to minimize environmental and health risks and to provide protection of the air, land, and waters of the state; and

(3) Requirements for closure, postclosure care and monitoring, and investigative and corrective action with respect to landfills. Such rules and regulations shall require financial assurance for such activities after April 9, 1996. Such rules and regulations shall impose any necessary requirements upon owners or operators in order to assure proper closure, care, monitoring, and investigative and corrective action with respect to landfills to minimize the need for future maintenance and eliminate, to the extent necessary to protect humans, animals, and the environment, releases or the threat of releases of contaminants or leachate.

**Source: Laws** 1992, LB 1257, § 34; Laws 1994, LB 1207, § 7; Laws 1995, LB 668, § 1.

**13-2035. Applicant for facility permit; exemption from siting approval requirements; when; application; contents.**

Any applicant who applies to the department for a permit for a facility pursuant to the Integrated Solid Waste Management Act shall be exempt from the siting approval requirements of sections 13-1701 to 13-1714 if a county, municipality, or agency is to be the owner of the facility and the facility is to be located in a county the unincorporated areas of which are among the areas to be served by such facility or the facility is to be located in the county of a municipality to be served by such facility if such facility will not serve unincorporated areas of a county.

The application of such county, municipality, or agency shall show that the applicant:

(1) Has considered the siting, operational, and traffic criteria established by section 13-1703;

(2) Has given notice of the proposed siting pursuant to the procedures established by section 13-1704;

(3) Has conducted a public hearing regarding the proposed siting preceded by published notice in a newspaper of general circulation in the county or municipality in which the proposed facility is to be located; and

(4) Has submitted a record of such hearing with its application to the department.

**Source: Laws** 1992, LB 1257, § 35.

**13-2036. Applications for permits; contents; department; powers and duties; contested cases; variance; minor modification; how treated.**

(1) The department shall review applications for permits for facilities and provide for the issuance, modification, suspension, denial, or revocation of permits after public notice. Applications shall be on forms provided by the department which solicit information necessary to make a determination on the application. The department shall issue public notice of its intent to grant or deny an application for a permit within sixty days after receipt of an application containing all required information. If an application is granted and the permit is issued or modified, any aggrieved person may file a petition for a contested case with the department within thirty days after the granting or modification of the permit, but such petition shall not act as a stay of the permit. If an application is denied, the department shall provide written rationale therefor to the applicant. Any change, modification, or other deviation from the terms or conditions of an approved permit must be approved by the director prior to implementation. Minor modifications described in subsection (5) of this section shall not require public notice or hearing.

(2) The department shall condition the issuance of permits on terms necessary to protect the public health and welfare and the environment as well as compliance with all applicable regulations. Any applicant may apply to the department for a variance from rules and regulations. The director may grant such variance if he or she finds that the public health and welfare will not be endangered 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. The considerations, procedures, conditions, and limitations set forth in section 81-1513 shall apply to any variance granted pursuant to this section.

(3) The director shall require the owner or operator of a facility to undertake investigation and corrective action in the event of contamination or a threat of contamination caused by the facility. Financial assurance for investigative or corrective action may be required in an amount determined by the director following notice and hearing.

(4) In addition to the information required by this section, the following specific areas shall be addressed in detail in any application filed in conjunction with the issuance, renewal, or reissuance of a permit for a facility:

(a) A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure of the facility as defined by the council. The plan shall include, but not be limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting the costs;

(b) A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of such control and treatment; and

(c) An emergency response and remedial action plan, including provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment and the identification of possible occurrences that may endanger human health and environment.

(5) If such application is modified after approval by the department, the application shall be resubmitted as a new proposal. The director may approve a minor modification of an application if he or she finds that the public health and welfare will not be endangered. The following minor modifications to an application are subject to departmental approval but do not require public notice or hearing:

(a) Correction of typographical errors;

(b) Change of name, address, or telephone number of persons or agencies identified in the application;

(c) Administrative or informational changes;

(d) Changes in procedures for maintaining operating records;

(e) Changes to provide for more frequent monitoring, reporting, sampling, or maintenance;

(f) Request for a compliance date extension if such date is not more than one hundred twenty days after the date specified in the approved permit;

(g) Adjustments to the cost estimates or the financial assurance instrument for inflation;

(h) Changes in the closure schedule for a unit or in the final closure schedule for the facility or an extension of the closure schedule;

(i) Changes to the days or hours of operation if the hours of operation are within the period from 6:00 a.m. to 8:00 p.m.;

(j) Changes to the facility contingency plan;

(k) Changes which improve sampling or analysis methods, procedures, or schedules;

(l) Changes in quality control or quality assurance plans which will better ensure that the specifications for construction, closure, sampling, or analysis will be met;

(m) Changes in the facility plan of operation which conform to guidance or rules approved by the Environmental Quality Council or provide more efficient waste handling or more effective waste screening; or

(n) Replacement of an existing monitoring well with a new well if location is not changed.

**Source: Laws** 1992, LB 1257, § 36; Laws 1994, LB 1207, § 8; Laws 2007, LB263, § 1.

**13-2037. Comprehensive state plan for solid waste management; department; duties; rules and regulations; requirements; approval of state plan.**

(1) The department shall keep current the comprehensive state plan for solid waste management developed pursuant to section 81-15,166, including the rules, regulations, and guidelines adopted by the council for facilities in cooperation with local governments and with agencies.

(2) Rules and regulations adopted and promulgated by the council shall comply with rules and regulations promulgated by the Environmental Protection Agency pursuant to the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., including the exemptions and deadlines provided for in 40 C.F.R. 258.1.

(3) The department shall apply for approval to the Environmental Protection Agency to attain an approved state program for solid waste management.

**Source: Laws** 1992, LB 1257, § 37.

**13-2038. Definition of certain solid wastes; council; adopt rules and regulations.**

The council shall adopt and promulgate rules and regulations which define lead-acid batteries, discarded household appliances, waste oil, and unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act.

**Source: Laws** 1992, LB 1257, § 38; Laws 1994, LB 1207, § 9.

**Cross References**

* Environmental Protection Act, see section 81-1532.

**13-2039. Land disposal of certain solid wastes; prohibited; when; exceptions.**

(1)(a) A landfill may accept yard waste without condition from December 1 through March 31 of each year.

(b) A landfill may accept yard waste year-round if such yard waste:

(i) Will be used for the production and recovery of methane gas for use as fuel (A) with the approval of the department and (B) at a landfill operating as a solid waste management facility with a permit issued pursuant to the department's rules and regulations; or

(ii) Has been separated at its source from other solid waste and will be used for the purpose of soil conditioning or composting.

(c) State and local governmental entities responsible for the maintenance of public lands shall give preference to the use of composted materials in all land maintenance activities. This section does not prohibit the use of yard waste as land cover or as soil-conditioning material.

(2) Land disposal of lead-acid batteries and waste oil is prohibited.

(3)(a) Land disposal of waste tires in any form is prohibited except tires that are nonrecyclable. For purposes of this subsection, nonrecyclable tire means a press-on solid tire, a solid pneumatic shaped tire, or a foam pneumatic tire.

(b) On and after September 1, 2003, placing or causing the placement or disposal of scrap tires in any form into the waters of the state is prohibited except as provided in section 13-2033.

(c) Tires are not considered disposed if they are (i) processed into crumb rubber form and reused or recycled in manufactured products such as, but not limited to, products used for schools, playgrounds, and residential, lawn, and garden applications, (ii) used as safety barriers for race courses for motorized vehicles, on the condition that the tires are bolted together and properly wrapped, and not in loose, compressed, or baled form, (iii) used as tire-derived fuel, (iv) retreaded, (v) processed into chip or shred form and used as drainage media in landfill construction or septic drain fields, (vi) used as a raw material in steelmaking, or (vii) processed into shred form and used as an alternative daily cover in a landfill or for a civil engineering project if such project is designed and constructed in compliance with the Engineers and Architects Regulation Act and prior approval for such project is obtained from the department by the tire shredder and the end user, except that departmental approval is not necessary for a tire project involving three thousand five hundred or fewer passenger tire equivalents of waste tires if the department receives notification of the project not later than thirty days prior to any construction on such project. The notification shall contain the name and address of the tire shredder and end user, the location of the project, a description of the type of project, the number of passenger tire equivalents of waste tires to be used, and any additional information the council determines is necessary to accomplish the purposes of the Integrated Solid Waste Management Act.

A race sponsor using tires as safety barriers pursuant to subdivision (3)(c)(ii) of this section prior to October 1, 2006, shall file an approved tire disposal plan with the department on or before January 1, 2007. A race sponsor using tires as safety barriers on or after October 1, 2006, shall file an approved tire disposal plan with the department prior to the sponsor's first such use of tires. An approved tire disposal plan shall provide for the disposal of tires which cease to be used as safety barriers in accordance with subsection (3) of section 13-2033, and any such race sponsor who ceases to use tires as safety barriers or whose facility ceases operation shall dispose of such tires in accordance with his or her approved tire disposal plan. Any modification to an approved tire disposal plan shall be submitted to and approved by the department prior to implementation of such modified plan. An approved tire disposal plan shall continue in effect as long as such sponsor uses tires as safety barriers.

(4) Land disposal of discarded household appliances is prohibited.

(5) Land disposal of unregulated hazardous wastes, except household hazardous wastes, which are exempt from the regulations under the Environmental Protection Act is prohibited unless such disposal occurs at a licensed hazardous waste disposal facility.

(6) For purposes of this section, land disposal shall include, but not be limited to, incineration at a landfill.

**Source: Laws** 1992, LB 1257, § 39; Laws 1994, LB 1034, § 1; Laws 1994, LB 1207, § 10; Laws 1995, LB 42, § 1; Laws 2003, LB 143, § 6; Laws 2006, LB 776, § 1; Laws 2006, LB 818, § 1.

**Cross References**

* **Engineers and Architects Regulation Act,** see section 81-3401.
* **Environmental Protection Act,** see section 81-1532.

**13-2040. Licenses issued under prior law; department review; expiration; permits issued under act; expiration.**

The department shall review all licenses for solid waste management facilities which were issued under the Environmental Protection Act prior to July 15, 1992, and which expire after October 1, 1993, to determine whether the licensee is in compliance with the requirements of the Integrated Solid Waste Management Act and the rules and regulations adopted by the council.

The department may require such licensee to furnish written documentation evidencing compliance. If the department determines that the licensee is not in compliance with the Integrated Solid Waste Management Act and the rules and regulations adopted by the council, the department may issue an amended permit as necessary to bring the licensee into compliance with these provisions.

All licenses for solid waste management facilities issued under the Environmental Protection Act prior to July 15, 1992, shall expire at the stated date of expiration if such expiration date is before October 1, 1993, except that the department may extend such licenses to continue until October 1, 1993, if it finds that the facility remains in compliance with the Environmental Protection Act and the rules and regulations adopted thereunder by the council prior to July 15, 1992.

Permits for solid waste processing facilities, as defined in rules and regulations adopted and promulgated by the council, issued pursuant to the Integrated Solid Waste Management Act shall expire not more than ten years following the date of issuance, as determined by the department. Permits may be renewed only if the department determines, upon application, that the permitholder is in compliance with all requirements of the act.

Permits for solid waste disposal areas, as defined in rules and regulations adopted and promulgated by the council, issued pursuant to the act shall expire not more than five years following the date of issuance as determined by the department. Permits may be renewed only if the department determines, upon application, that the permitholder is in compliance with all requirements of the act.

**Source: Laws** 1992, LB 1257, § 40; Laws 1997, LB 752, § 72; Laws 2003, LB 143, § 7.

**Cross References**

* **Environmental Protection Act,** see section 81-1532.

**13-2041. Integrated Solid Waste Management Cash Fund; created; use; investment; application fee schedule; council; establish; permitholder; annual fee.**

There is hereby created the Integrated Solid Waste Management Cash Fund. All fees collected by the department pursuant to this section or fees designated pursuant to section 13-2042 or money forfeited under subsection (21) of section 81-1505 shall be remitted to the State Treasurer for credit to the fund. Forfeited funds may only be used for purposes specified in the underlying financial assurance instrument. 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.

The council shall adopt and promulgate rules and regulations establishing a fee schedule to be paid to the department by persons applying for a permit to operate a facility pursuant to the Integrated Solid Waste Management Act or the Environmental Protection Act. Payment shall be made in full to the department before the application is processed.

By October 1 of each year, any person holding a permit under the Integrated Solid Waste Management Act or to operate a solid waste management facility under the Environmental Protection Act shall pay an annual fee in an amount to be determined by the council. The annual fee shall be sufficient to cover the costs of ongoing permit considerations. The fees collected pursuant to this section shall not exceed the amount necessary to pay reasonable costs of administering the permit program pursuant to the Integrated Solid Waste Management Act or the Environmental Protection Act.

The State Treasurer shall transfer one million three hundred eighty-four thousand four hundred eighty-four dollars from the Integrated Solid Waste Management Cash Fund to the Superfund Cost Share Cash Fund on or before June 1, 2006.

**Source: Laws** 1992, LB 1257, § 41; Laws 1994, LB 1066, § 12; Laws 2006, LB 1061, § 1.

**Cross References**

* **Environmental Protection Act,** see section 81-1532.
* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**13-2042. Landfill disposal fee; payment; interest; use; grants; department; powers; council; duties.**

(1) A disposal fee of one dollar and twenty-five cents is imposed for each six cubic yards of uncompacted solid waste, one dollar and twenty-five cents for each three cubic yards of compacted solid waste, or one dollar and twenty-five cents per ton of solid waste (a) disposed of at landfills regulated by the department or (b) transported for disposal out of state from a solid waste processing facility holding a permit under the Integrated Solid Waste Management Act. Each operator of a landfill or solid waste processing facility shall make the fee payment quarterly. The fee shall be paid quarterly to the department on or before the forty-fifth day following the end of each quarter. For purposes of this section, landfill has the same definition as municipal solid waste landfill unit in 40 C.F.R. 258.2.

(2) Each fee payment shall be accompanied by a form prepared and furnished by the department and completed by the permitholder. The form shall state the total volume of solid waste disposed of at the landfill or transported for disposal out of state from the solid waste processing facility during the payment period and shall provide any other information deemed necessary by the department. The form shall be signed by the permitholder.

(3) If a permitholder fails to make a timely payment of the fee, he or she shall pay interest on the unpaid amount at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

(4) This section shall not apply to a site used solely for the reclamation of land through the introduction of landscaping rubble or inert material.

(5) Fifty percent of the total of such fees collected in each quarter shall be remitted to the State Treasurer for credit to the Integrated Solid Waste Management Cash Fund and shall be used by the department to cover the direct and indirect costs of responding to spills or other environmental emergencies, of regulating, investigating, remediating, and monitoring facilities during and after operation of facilities, or of performance of regulated activities under the Integrated Solid Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act. The department may seek recovery of expenses paid from the fund for responding to spills or other environmental emergencies or for investigation, remediation, and monitoring of a facility from any person who owned, operated, or used the facility in violation of the Integrated Solid Waste Management Act, the Nebraska Litter Reduction and Recycling Act, and the Waste Reduction and Recycling Incentive Act in a civil action filed in the district court of Lancaster County.

(6)(a) The remaining fifty percent of the total of such fees collected per quarter shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. For purposes of determining the total fees collected, any amount of fees rebated pursuant to section 13-2042.01 shall be included as if the fees had not been rebated, and the amount of the fees rebated pursuant to such section shall be deducted from the amount to be credited to the Waste Reduction and Recycling Incentive Fund.

(b) From the fees credited to the Waste Reduction and Recycling Incentive Fund under this subsection:

(i) Grants shall be awarded to counties, municipalities, and agencies for the purposes of planning and implementing facilities and systems to further the goals of the Integrated Solid Waste Management Act. The grant proceeds shall not be used to fund landfill closure site assessments, closure, monitoring, or investigative or corrective action costs for existing landfills or landfills already closed prior to July 15, 1992. The council shall adopt and promulgate rules and regulations to carry out this subdivision. Such rules and regulations shall base the awarding of grants on a project's reflection of the integrated solid waste management policy and hierarchy established in section 13-2018, the proposed amount of local matching funds, and community need; and

(ii) The department may disburse amounts to political subdivisions for costs incurred in response to and remediation of any solid waste disposed of or abandoned at dump sites or discrete locations along public roadways or ditches and on any contiguous area affected by such disposal or abandonment. Such reimbursement shall be by application to the department on forms prescribed by the department. The department shall prepare and make available a schedule of eligible costs and application procedures which may include a requirement of a demonstration of preventive measures to be taken to discourage future dumping. The department may not disburse to political subdivisions an amount which in the aggregate exceeds five percent of total revenue from the disposal fees collected pursuant to this section in the preceding fiscal year. These disbursements shall be made on a fiscal-year basis, and applications received after funds for this purpose have been exhausted may be eligible during the next fiscal year but are not an obligation of the state. Any eligible costs incurred by a political subdivision which are not funded due to a lack of funds shall not be considered an obligation of the state. In disbursing funds under this subdivision, the director shall make efforts to ensure equal geographical distribution throughout the state and may deny reimbursements in order to accomplish this goal.

**Source: Laws** 1992, LB 1257, § 42; Laws 1994, LB 1207, § 11; Laws 1997, LB 495, § 2; Laws 1999, LB 592, § 1; Laws 2001, LB 128, § 1; Laws 2003, LB 143, § 8; Laws 2004, LB 916, § 1; Laws 2010, LB696, § 1; Laws 2011, LB29, § 1.

**Cross References**

* **Nebraska Litter Reduction and Recycling Act,** see section 81-1534.
* **Waste Reduction and Recycling Incentive Act,** see section 81-15,158.01.

**13-2042.01. Landfill disposal fee; rebate to municipality or county; application; Department of Environmental Quality; materiel division of Department of Administrative Services; municipality; county; duties; suspension or denial of rebate; appeal; rules and regulations.**

(1) The Department of Environmental Quality shall rebate to the municipality or county of origin ten cents of the disposal fee required by section 13-2042 for solid waste disposed of at landfills regulated by the department or transported for disposal out of state from a solid waste processing facility holding a permit under the Integrated Solid Waste Management Act and when such solid waste originated in a municipality or county with a purchasing policy approved by the department. The fee shall be rebated on a schedule agreed upon between the municipality or county and the department. The schedule shall be no more often than quarterly and no less often than annually.

(2) Any municipality or county may apply to the department for the rebate authorized in subsection (1) of this section if the municipality or county has a written purchasing policy in effect requiring a preference for purchasing products, materials, or supplies which are manufactured or produced from recycled material. The policy shall provide that the preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality as determined by the municipality or county. Upon receipt of an application, the Department of Environmental Quality shall submit the application to the materiel division of the Department of Administrative Services for review. The materiel division shall review the application for compliance with this section and any rules and regulations adopted pursuant to this section and to determine the probable effectiveness in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material. The materiel division shall provide a report of its findings to the Department of Environmental Quality within thirty days after receiving the review request. The Department of Environmental Quality shall approve the application or suggest modifications to the application within sixty days after receiving the application based on the materiel division's report, any analysis by the Department of Environmental Quality, and any factors affecting compliance with this section or the rules and regulations adopted pursuant to this section.

(3) A municipality or county shall file a report complying with the rules and regulations adopted pursuant to this section with the Department of Environmental Quality before April 1 of each year documenting purchasing practices for the past calendar year in order to continue receiving the rebate. The report shall include, but not be limited to, quantities of products, materials, or supplies purchased which were manufactured or produced from recycled material. The department shall provide copies of each report to the materiel division in a timely manner. If the department determines that a municipality or county is not following the purchasing policy presented in the approved application or that the purchasing policy presented in the approved application is not effective in assuring that a preference is given to products, materials, or supplies which are manufactured or produced from recycled material, the department shall suspend the rebate until it determines that the municipality or county is giving a preference to products, materials, or supplies which are manufactured or produced from recycled material pursuant to a written purchasing policy approved by the department subsequent to the suspension. The materiel division may make recommendations to the department regarding suspensions and reinstatements of rebates. The Department of Administrative Services may adopt and promulgate rules and regulations establishing procedures for reviewing applications and for annual reports.

(4) Any suspension of the rebate or denial of an application made under this section may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(5) The council shall adopt and promulgate rules and regulations establishing criteria for application procedures, for accepting and denying applications, for required reports, and for suspending and reinstating the rebate. The materiel division shall recommend to the council criteria for accepting and denying applications and for suspending and reinstating the rebate. The materiel division may make other recommendations to the council regarding rules and regulations authorized under this section.

**Source: Laws** 1994, LB 1207, § 3; Laws 2009, LB180, § 1; Laws 2010, LB696, § 2.

**Cross References**

* **Administrative Procedure Act,** see section 84-920.

**13-2043. Construction of act.**

Nothing in the Integrated Solid Waste Management Act shall be construed to apply to any operations or activities regulated by the Nebraska Oil and Gas Conservation Commission or to operations or activities regulated under subsection (10) of section 81-1505.

**Source: Laws** 1992, LB 1257, § 43.

Nebraska Environmental Trust Act

**81-15,167. Act, how cited.**

Sections 81-15,167 to 81-15,176 shall be known and may be cited as the Nebraska Environmental Trust Act.

**Source:** Laws 1992, LB 1257, § 44; Laws 2000, LB 957, § 7; Laws 2002, LB 1003, § 48.

**81-15,168. Legislative intent.**

It is the intent of the Legislature to establish the Nebraska Environmental Trust for the purpose of conserving, enhancing, and restoring the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and natural areas of aesthetic or scenic values. The current and future well-being of the state and its citizens is vitally dependent on a safe and clean environment and requires a dynamic, proactive approach to address environmental needs. The trust shall complement existing governmental and private efforts by encouraging and leveraging the use of private resources on environmental needs with the greatest potential impact on future environmental quality in Nebraska. The trust shall develop a long-range environmental focus which encompasses the vision of all Nebraskans regarding the future of the environment and shall join public and private efforts in achieving the collective environmental goals of Nebraska's citizens.

**Source:** Laws 1992, LB 1257, § 45.

**81-15,169. Terms, defined.**

For purposes of the Nebraska Environmental Trust Act:

(1) Board means the Nebraska Environmental Trust Board; and

(2) Trust means the Nebraska Environmental Trust.

**Source:** Laws 1992, LB 1257, § 46; Laws 2000, LB 957, § 8.

**81-15,170. Nebraska Environmental Trust Board; created; membership; qualifications; executive director.**

The Nebraska Environmental Trust Board is hereby created as an entity of the executive branch. The board shall consist of the Director of Environmental Quality, the Director of Natural Resources, the Director of Agriculture, the secretary of the Game and Parks Commission, the chief executive officer of the Department of Health and Human Services or his or her designee, and nine citizens appointed by the Governor with the approval of a majority of the Legislature. The citizen members shall begin serving immediately following notice of nomination and prior to approval by the Legislature. The citizen members shall represent the general public and shall have demonstrated competence, experience, and interest in the environment of the state. Two of the citizen appointees shall also have experience with private financing of public-purpose projects. Three appointees shall be chosen from each of the three congressional districts. The board shall hire an executive director who shall hire and supervise other staff members as may be authorized by the board. The executive director shall serve at the pleasure of the board and be solely responsible to it. The Game and Parks Commission shall provide administrative support, including, but not limited to, payroll and accounting functions, to the board.

**Source:** Laws 1992, LB 1257, § 47; Laws 1993, LB 138, § 79; Laws 1996, LB 1044, § 869; Laws 2000, LB 900, § 248; Laws 2002, LB 1003, § 49; Laws 2007, LB296, § 758.

**81-15,170.01. Board members; conflict of interest; treatment.**

Members of the board shall comply with the conflict of interest provisions of the Nebraska Political Accountability and Disclosure Act. Any member of the board who is also a director of a state agency shall abstain from voting on applications which would provide funding primarily to his or her agency.

**Source:** Laws 2002, LB 1003, § 50.

**Cross References**

* **Nebraska Political Accountability and Disclosure Act,** see section 49-1401.

**81-15,171. Board members; terms; vacancy; expenses.**

The citizen members of the board shall be appointed for terms of six years, except that of the members first appointed, except directors of agencies, the terms of three shall expire at the end of the second year, three at the end of the fourth year, and three at the end of the sixth year, as designated at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. A vacancy on the board shall exist in the event of the death, disability, or resignation of a member. All members shall be reimbursed for their actual and necessary travel expenses as provided in sections 81-1174 to 81-1177.

**Source:** Laws 1992, LB 1257, § 48; Laws 1993, LB 138, § 80.

**81-15,172. Board; officers; meetings.**

The board shall annually elect a chairperson from among the citizen members. The board shall meet at least quarterly and may meet more often at the call of the chairperson or the request of any three members.

**Source:** Laws 1992, LB 1257, § 49.

**81-15,173. Board; powers and duties.**

The board shall have and may exercise the following powers and duties:

(1) Adopt bylaws to govern the proceedings of the board;

(2) Keep records, conduct hearings, and adopt and promulgate rules and regulations to carry out its duties and implement the Nebraska Environmental Trust Act;

(3) Contract with the Game and Parks Commission for administrative support;

(4) Contract with governmental and private agencies to receive services and technical assistance;

(5) Contract with governmental and private agencies to provide services and technical assistance;

(6) Establish environmental categories for use of the funds and develop an appropriate rating system for each category;

(7) Establish ad hoc advisory boards and subcommittees;

(8) Sponsor or assist environmental proposals pertaining to the environmental categories of the board, including issuing grants to agencies, organizations, and persons engaged in the purposes of the trust;

(9) Cooperate with or assist any unit of the state, any political subdivision, or any private, public, or federal agency, foundation, or person in furtherance of the purposes of the trust;

(10) Acquire and dispose of personal property in furtherance of the purposes of the trust; and

(11) Apply for or accept any gift, grant, bequest, royalty, or donation, designate the fund to which it will be credited, and expend the proceeds in furtherance of the purposes of the trust.

**Source:** Laws 1992, LB 1257, § 50; Laws 2000, LB 957, § 9; Laws 2004, LB 832, § 1.

**81-15,174. Nebraska Environmental Trust Fund; created; use; investment.**

The Nebraska Environmental Trust Fund is created. The fund shall be maintained in the state accounting system as a cash fund. Except as otherwise provided in this section, the fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act, including the payment of administrative costs. Money in the fund shall include proceeds credited pursuant to section 9-812 and proceeds designated by the board pursuant to section 81-15,173. 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.

**Source:** Laws 1992, LB 1257, § 51; Laws 1994, LB 1066, § 124; Laws 2000, LB 957, § 10; Laws 2002, Second Spec. Sess., LB 1, § 8; Laws 2003, LB 408, § 6; Laws 2004, LB 962, § 111; Laws 2006, LB 1061, § 12; Laws 2011, LB229, § 2.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**81-15,174.01. Nebraska Environmental Endowment Fund; created; use; investment.**

The Nebraska Environmental Endowment Fund is created. The fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act. The fund shall include proceeds designated by the board pursuant to section 81-15,173, including grants from the Nebraska Environmental Trust Fund. Grants from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund shall be no more than twice the total of any other proceeds received by the Nebraska Environmental Endowment Fund for the same year. Such grants, considered in the aggregate, shall in no case exceed fifty percent of the total proceeds credited to the Nebraska Environmental Trust Fund pursuant to section 9-812 for that year.

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.

Allocations received by the Nebraska Environmental Endowment Fund from the Nebraska Environmental Trust Fund shall not be reallocated by the board, but shall remain invested. Any interest income earned by the Nebraska Environmental Endowment Fund shall be available for allocation by the board as provided in section 81-15,175.

**Source:** Laws 2000, LB 957, § 11.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**81-15,175. Fund allocations; board; powers and duties; grant award to Water Resources Cash Fund; payments; legislative intent; additional grant; additional reporting.**

(1) The board may make an annual allocation each fiscal year from the Nebraska Environmental Trust Fund to the Nebraska Environmental Endowment Fund as provided in section 81-15,174.01. The board shall make annual allocations from the Nebraska Environmental Trust Fund and may make annual allocations each fiscal year from the Nebraska Environmental Endowment Fund for projects which conform to the environmental categories of the board established pursuant to section 81-15,176 and to the extent the board determines those projects to have merit. The board shall establish a calendar annually for receiving and evaluating proposals and awarding grants. To evaluate the economic, financial, and technical feasibility of proposals, the board may establish subcommittees, request or contract for assistance, or establish advisory groups. Private citizens serving on advisory groups shall be reimbursed for their actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

(2) The board shall establish rating systems for ranking proposals which meet the board's environmental categories and other criteria. The rating systems shall include, but not be limited to, the following considerations:

(a) Conformance with categories established pursuant to section 81-15,176;

(b) Amount of funds committed from other funding sources;

(c) Encouragement of public-private partnerships;

(d) Geographic mix of projects over time;

(e) Cost-effectiveness and economic impact;

(f) Direct environmental impact;

(g) Environmental benefit to the general public and the long-term nature of such public benefit; and

(h) Applications recommended by the Director of Natural Resources and submitted by the Department of Natural Resources pursuant to subsection (7) of section 61-218 shall be awarded fifty priority points in the ranking process for the 2011 grant application if the Legislature has authorized annual transfers of three million three hundred thousand dollars to the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund in fiscal year 2013-14. Priority points shall be awarded if the proposed programs set forth in the grant application are consistent with the purposes of reducing consumptive uses of water, enhancing streamflows, recharging ground water, or supporting wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(3) A grant awarded under this section pursuant to an application made under subsection (7) of section 61-218 shall be paid out in the following manner:

(a) The initial three million three hundred thousand dollar installment shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund no later than fifteen business days after the date that the grant is approved by the board;

(b) The second three million three hundred thousand dollar installment shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund no later than May 15, 2013; and

(c) The third three million three hundred thousand dollar installment shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund no later than May 15, 2014, if the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund to the Water Resources Cash Fund for fiscal year 2013-14.

(4) It is the intent of the Legislature that the Department of Natural Resources apply for an additional three-year grant from the Nebraska Environmental Trust Fund that would begin in fiscal year 2014-15 and such application shall be awarded fifty priority points in the ranking process as set forth in subdivision (2)(h) of this section if the following criteria are met:

(a) The Natural Resources Committee of the Legislature has examined options for water funding and has submitted a report electronically to the Clerk of the Legislature and the Governor by December 1, 2012, setting forth:

(i) An outline and priority listing of water management and funding needs in Nebraska, including instream flows, residential, agricultural, recreational, and municipal needs, interstate obligations, water quality issues, and natural habitats preservation;

(ii) An outline of statewide funding options which create a dedicated, sustainable funding source to meet the needs set forth in the report; and

(iii) Recommendations for legislation;

(b) The projects and activities funded by the department through grants from the Nebraska Environmental Trust Fund under this section have resulted in enhanced streamflows, reduced consumptive uses of water, recharged ground water, supported wildlife habitat, or otherwise contributed towards conserving, enhancing, and restoring Nebraska's ground water and surface water resources. On or before July 1, 2014, the department shall submit electronically a report to the Natural Resources Committee of the Legislature providing demonstrable evidence of the benefits accrued from such projects and activities; and

(c) In addition to the grant reporting requirements of the trust, on or before July 1, 2014, the department provides to the board a report which includes documentation that:

(i) Expenditures from the Water Resources Cash Fund made to natural resources districts have met the matching fund requirements provided in subdivision (5)(a) of section 61-218;

(ii) Ten percent or less of the matching fund requirements has been provided by in-kind contributions for expenses incurred for projects enumerated in the grant application. In-kind contributions shall not include land or land rights; and

(iii) All other projects and activities funded by the department through grants from the Nebraska Environmental Trust Fund under this section were matched not less than forty percent of the project or activity cost by other funding sources.

(5) The board may establish a subcommittee to rate grant applications. If the board uses a subcommittee, the meetings of such subcommittee shall be subject to the Open Meetings Act. The subcommittee shall (a) use the rating systems established by the board under subsection (2) of this section, (b) assign a numeric value to each rating criterion, combine these values into a total score for each application, and rank the applications by the total scores, (c) recommend an amount of funding for each application, which amount may be more or less than the requested amount, and (d) submit the ranked list and recommended funding to the board for its approval or disapproval.

(6) The board may commit funds to multiyear projects, subject to available funds and appropriations. No commitment shall exceed three years without formal action by the board to renew the grant or contract. Multiyear commitments may be exempt from the rating process except for the initial application and requests to renew the commitment.

(7) The board shall adopt and promulgate rules and regulations and publish guidelines governing allocations from the fund. The board shall conduct annual reviews of existing projects for compliance with project goals and grant requirements.

(8) Every five years the board may evaluate the long-term effects of the projects it funds. The evaluation may assess a sample of such projects. The board may hire an independent consultant to conduct the evaluation and may report the evaluation findings to the Legislature and the Governor. The report submitted to the Legislature shall be submitted electronically.

**Source:** Laws 1992, LB 1257, § 52; Laws 1993, LB 138, § 81; Laws 2000, LB 957, § 12; Laws 2002, LB 1003, § 51; Laws 2004, LB 832, § 2; Laws 2011, LB229, § 3; Laws 2011, LB366, § 1; Laws 2012, LB782, § 204.

**Cross References**

* **Open Meetings Act,** see section 84-1407.

**81-15,176. Environmental categories of projects; board; establish grant criteria.**

(1) Subject to subsection (3) of this section, the board shall establish environmental categories of projects eligible for funding by the trust. The board, after allowing opportunity for public comment, shall designate as categories those environmental goals which most affect the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scenic values. In designating environmental categories, the board shall attempt to focus on the areas which promise the greatest opportunities for effective action to achieve and preserve the future environmental quality in the state. The board shall establish categories for five-year periods beginning July 1, 1995. The board may establish annual priorities within the five-year categories. The board shall provide for public involvement in developing the categories for such five-year periods and any priorities within these categories, including, but not limited to, public meetings in each of the three congressional districts.

(2) The board shall establish criteria for determining the eligibility of projects for grant assistance, which criteria shall include the following:

(a) The grants shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation;

(b) No more than sixty percent of grant allocations in any year shall assist remediation of soils or ground water, and no grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized;

(c) The grants shall not pay for projects which provide primarily private benefits or relieve private liability for environmental damage;

(d) The grants shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship;

(e) The grants should assist those projects which offer the greatest environmental benefits relative to cost;

(f) The grants should assist those projects which provide clear and direct environmental benefits;

(g) The grants should assist those projects which will make a real contribution to achieving the board's environmental categories;

(h) The grants should assist those projects which offer the greatest public benefits; and

(i) The grants shall not pay for land or easements acquired without the full and express consent of the landowner.

(3) Until the first five-year categories become effective on July 1, 1995, the board shall observe the following categories for allocating grants:

(a) Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species;

(b) Surface water quality, including actions to preserve lakes and streams from degradation;

(c) Ground water quality, including fostering best management practices as defined in section 46-706, actions to preserve ground water from degradation, and remediation of soils or ground water; and

(d) Development of recycling markets and reduction of solid waste volume and toxicity.

(4) The board may refine and clarify these initial categories.

**Source:** Laws 1992, LB 1257, § 53; Laws 1993, LB 138, § 82; Laws 1994, LB 1207, § 18; Laws 1996, LB 108, § 78; Laws 2000, LB 957, § 13; Laws 2002, LB 1003, § 52; Laws 2004, LB 832, § 3; Laws 2004, LB 962, § 113.

Nebraska Litter Reduction and Recycling Act

**81-1535. Legislative declaration; litter and recycling program.**

The Legislature declares that the protection of the public health, safety, and well-being, the maintenance of the economic productivity and environmental quality of the state, and the conservation of natural resources require the implementation of a comprehensive litter and recycling program throughout the state and the rapid development of technologically and economically feasible operational projects for the recovery of energy and resources.

**Source:** Laws 1979, LB 120, § 2.

**81-1536. Definitions, where found.**

For purposes of the Nebraska Litter Reduction and Recycling Act, unless the context otherwise requires, the definitions found in sections 81-1537 to 81-1548.04 shall be used.

**Source:** Laws 1979, LB 120, § 3; Laws 1981, LB 253, § 2; Laws 1993, LB 203, § 3.

**81-1537. Department, defined.** Department shall mean the Department of Environmental Quality.

**Source:** Laws 1979, LB 120, § 4; Laws 1993, LB 3, § 50.

**81-1538. Council, defined.**

Council shall mean the Environmental Quality Council.

**Source:** Laws 1979, LB 120, § 5; Laws 1993, LB 3, § 51.

**81-1539. Fund, defined.** Fund shall mean the Nebraska Litter Reduction and Recycling Fund.

**Source:** Laws 1979, LB 120, § 6.

**81-1540. Director, defined.** Director shall mean the Director of Environmental Quality.

**Source:** Laws 1979, LB 120, § 7; Laws 1993, LB 3, § 52.

**81-1541. Litter, defined.**

Litter shall mean all waste material susceptible to being dropped, deposited, discarded, or otherwise disposed of by any person upon any property in the state, but not including the wastes of primary processes of farming or manufacturing. Waste material as used in this section shall mean any material appearing in a place or in a context not associated with that material's function or origin.

**Source:** Laws 1979, LB 120, § 8; Laws 1981, LB 253, § 3.

**81-1542. Manufacturer, defined.**

Manufacturer shall mean any person engaged in a business activity who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from the sale of tangible personal property which the person has made, produced, manufactured, processed, or fabricated which is within any of the categories listed in section 81-1560.

**Source:** Laws 1979, LB 120, § 9; Laws 1981, LB 253, § 4; Laws 1993, LB 203, § 4.

**81-1543. Person, defined.**

Person shall mean any natural person, political subdivision, government agency, public or private corporation, partnership, limited liability company, joint venture, association, firm, or individual proprietorship.

**Source:** Laws 1979, LB 120, § 10; Laws 1993, LB 121, § 539.

**81-1544. Public place, defined.**

Public place shall mean any place or area in the state that is used or held out for use by the public, whether owned or operated by public or private interests.

**Source:** Laws 1979, LB 120, § 11.

**81-1545. Recycling, defined.**

Recycling shall mean the process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering and reusing the resources contained therein.

**Source:** Laws 1979, LB 120, § 12.

**81-1546. Recycling center, defined.** Recycling center shall mean a central collection point in a community for recyclable materials.

**Source:** Laws 1979, LB 120, § 13.

**81-1547. Resource recovery, defined.**

Resource recovery shall mean a system or process for the recovery of materials or energy from waste material.

**Source:** Laws 1979, LB 120, § 14.

**81-1548. Source separation, defined.**

Source separation shall mean separation by the public from their general refuse of recyclable material.

**Source:** Laws 1979, LB 120, § 15.

**81-1548.01. Wholesaler, defined.**

Wholesaler shall mean any person engaged in business who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from sales at the wholesale level to retailers, other merchants, or industrial, institutional, and commercial users of any tangible personal property falling into any of the categories listed in section 81-1560 which is sold at the wholesale level.

**Source:** Laws 1981, LB 253, § 5; Laws 1993, LB 203, § 5.

**81-1548.02. Retailer, defined.**

Retailer shall mean any person engaged in business who has annual gross proceeds in this state of at least one hundred thousand dollars resulting from the sales of tangible personal property for storage, use, or other consumption or from the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption of any of the products, including byproducts, falling into the categories listed in section 81-1560.02.

**Source:** Laws 1981, LB 253, § 6; Laws 1993, LB 203, § 6.

**81-1548.03. Tangible personal property, defined.**

Tangible personal property shall mean all tangible personal property except:

(1) Gas, electricity, and water delivered through mains, lines, pipes, or channels to purchasers;

(2) Food and food products for human or pet consumption sold in bulk form and not packaged or subpackaged in individual containers, packages, or units, or a type of size not suitable for sale to consumers purchasing in the ordinary course of retail marketing; and

(3) Fertilizer, seeds, annual plants, any form of animal life, and animal feed sold for resale or use in the agricultural food industry.

**Source: Laws** 1981, LB 253, § 7.

**81-1548.04. Gross proceeds, defined.**

Gross proceeds shall mean the total receipts from all sales less expenditures for the purchase of any item in this state for the purpose of recycling such item.

**Source: Laws** 1981, LB 253, § 8.

**81-1549. Council; adopt rules and regulations.**

In addition to other powers and duties, the council shall have the power to propose and to adopt and promulgate rules and regulations necessary to carry out the provisions, purposes, and intent of the Nebraska Litter Reduction and Recycling Act.

**Source: Laws** 1979, LB 120, § 16; Laws 1981, LB 253, § 9; Laws 1993, LB 203, § 7.

**81-1550. Litter prone activities and areas; litter receptacles; required.**

Litter prone activities and areas shall be required to have appropriate litter receptacles meeting minimum standards established by the department. The council shall, by regulation, determine what are litter prone activities and areas.

**Source: Laws** 1979, LB 120, § 17.

**81-1551. Litter receptacles; owner or operator provide and maintain; penalty.**

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles are required by section 81-1550 to procure and place such receptacles at his or her own expense on the premises and to maintain the same in accord with rules and regulations adopted by the council. Any person who fails to place such litter receptacles on the premises in the numbers required or to maintain such receptacles in the manner required shall be guilty of a Class V misdemeanor.

**Source: Laws** 1979, LB 120, § 18; Laws 1981, LB 253, § 10.

**81-1552. Litter receptacle; abuse; misuse; prohibited; violation; penalty.**

(1) No person shall damage, deface, abuse, or misuse any litter receptacle not owned by him or her so as to interfere with its proper function or to detract from its proper appearance.

(2) No person shall deposit leaves, clippings, prunings, garden refuse, or household waste materials in any litter receptacle, except with the permission of the owner of such receptacle.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

**Source: Laws** 1979, LB 120, § 19; Laws 1981, LB 253, § 11.

**81-1553. Repealed. Laws 2007, LB 79, § 3.81-1553.01. Litter problem; surveys; department; grant funds; progress report.**

Prior to April 5, 2007, in order to identify the litter problem more fully and to measure the progress made by the department, the department conducted, or granted funds to enable public or private agencies to conduct, a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas in the state. The department shall conduct, or grant funds to enable public or private agencies to conduct, followup surveys on a sufficiently regular basis to provide meaningful measurement of the amount and composition of litter and the rate of littering. The results of these surveys shall be reported to the Governor.

**Source: Laws** 2007, LB568, § 2.

**81-1554. Department; jobs for unemployed; design programs; grant funds.**

In order to provide employment and to establish litter free areas, the department may design programs and grant funds for the use of unemployed persons on a seasonal and part-time basis. In designing such programs, the department shall cooperate and coordinate with federal, other governmental, and private programs aimed at providing jobs for the unemployed.

**Source: Laws** 1979, LB 120, § 21.

**81-1555. Department; encourage effective local littering laws.**

The department shall work toward establishing effective local ordinances and resolutions relating to littering laws.

**Source: Laws** 1979, LB 120, § 22.

**81-1556. Act; enforcement; personnel.**

The director may designate trained employees of the department to enforce and administer the Nebraska Litter Reduction and Recycling Act and all rules and regulations adopted pursuant to the act. The director may contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of the act. All peace officers of this state or any political subdivision of this state shall enforce the provisions of the act and all rules and regulations adopted pursuant to the act and are empowered to issue citations to any person violating any provision of the act in their presence.

**Source: Laws** 1979, LB 120, § 23; Laws 1981, LB 253, § 13; Laws 1993, LB 203, § 9.

**81-1557. Department; littering laws; appropriate provisions posted.**

The penalties which may be imposed for littering in this state and any provisions of the Nebraska Litter Reduction and Recycling Act deemed appropriate by the department shall be posted along public highways of this state, at visitor centers, at the entrance to state parks and recreation areas, at public beaches, and at such other public places as the department determines is necessary to accomplish the purposes of the act.

**Source: Laws** 1979, LB 120, § 24; Laws 1981, LB 253, § 14; Laws 1993, LB 203, § 10.

**81-1558. Nebraska Litter Reduction and Recycling Fund; created; use; investment.**

There is hereby created within the state treasury a fund to be known as the Nebraska Litter Reduction and Recycling Fund. The proceeds of the fee imposed by sections 81-1559 to 81-1560.02, money received by the department as gifts, donations, or contributions toward the goals stated in section 81-1535, and money received by the department for nonprofit activities concerning litter reduction and recycling, including, but not limited to, honoraria, literature furnished by the department, and funds realized as reimbursement for expenses in conducting educational forums, shall be remitted to the State Treasurer for credit to such fund to be used for the administration and enforcement of the Nebraska Litter Reduction and Recycling Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**Source:** Laws 1979, LB 120, § 25; Laws 1981, LB 253, § 15; Laws 1993, LB 203, § 11; Laws 1994, LB 1066, § 113; Laws 1999, LB 592, § 2.

**Cross References**

* **Nebraska Capital Expansion Act, see section 72-1269.**
* **Nebraska State Funds Investment Act, see section 72-1260.**

**81-1559. Annual litter fee; manufacturer; wholesaler; rate; collection and administration; license; revocation; violation; penalty.**

(1) To aid in defraying the cost of administration of the Nebraska Litter Reduction and Recycling Act and the Waste Reduction and Recycling Incentive Fund, there shall be collected an annual litter fee equal to one hundred seventy-five dollars for each one million dollars of gross proceeds of products manufactured and the sales of which are consummated within this state, including byproducts, in the case of manufacturers and equal to one hundred seventy-five dollars for each one million dollars of the gross proceeds of the sales consummated within this state in the case of wholesalers. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom if the person performs only the growing or raising function of such animal, bird, or insect. Such fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 each year, based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The collection and penalty provisions of the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) No manufacturer or wholesaler in the state shall produce or sell any product which falls within the categories enumerated in this section and section 81-1560 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. If the applicant is an individual, the application for the license shall include the applicant's social security number. Failure to obtain such license shall be a Class IV misdemeanor. Except as provided in section 81-1560.03, any manufacturer or wholesaler who fails to pay the fee imposed pursuant to subsection (1) of this section may have such license revoked in the same manner as permits are revoked pursuant to section 77-2705.

**Source:** Laws 1979, LB 120, § 26; Laws 1981, LB 253, § 19; Laws 1986, LB 1027, § 222; Laws 1993, LB 203, § 12; Laws 1997, LB 752, § 226.

**Cross References**

* **Nebraska Revenue Act of 1967, see section 77-2701.**

**81-1560. Litter fee; manufacturer; wholesaler; products subject to; enumerated.**

The fee imposed by section 81-1559 shall be calculated only on the value of products or the gross proceeds of sales of products which directly contribute to litter as defined in section 81-1541 and which fall into the following categories: (1) Food for human or pet consumption; (2) groceries; (3) cigarettes and other tobacco products; (4) soft drinks and carbonated waters; (5) liquor, wine, and beer and other malt beverages; (6) household paper and paper products, excluding magazines, periodicals, newspapers, and literary works; (7) glass containers; (8) metal containers; (9) plastic or fiber containers made of synthetic material; and (10) cleaning agents and toiletries.

**Source:** Laws 1979, LB 120, § 27; Laws 1981, LB 253, § 20.

**81-1560.01. Annual litter fee; retailer; rate; collection and administration; license; revocation; violation; penalty.**

(1) There is hereby imposed on every person engaged in business within this state as a retailer selling products which fall within the categories enumerated in section 81-1560.02 an annual litter fee equal to one hundred seventy-five dollars for each one million dollars of gross proceeds of the sales which are consummated within this state except as provided in sections 81-1560.02 to 81-1560.04. The litter fee provided by this section shall not be applied to gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of the animal, bird, or insect. The annual litter fee shall be collected and administered by the Department of Revenue. The fee imposed by this section shall be due on or before October 1 based upon the gross proceeds for the immediately preceding July 1 to June 30 period. The collection and penalty provisions of the Nebraska Revenue Act of 1967 shall be applicable to the administration and collection of the fee imposed by this section.

(2) No retailer in this state shall sell any product which falls within the categories enumerated in section 81-1560.02 without having first obtained a license issued in the same manner as permits issued pursuant to section 77-2705. Failure to obtain a license shall be a Class IV misdemeanor. Except as provided in sections 81-1560.02 to 81-1560.04, any retailer who fails to pay the fee imposed pursuant to subsection (1) of this section may have the license revoked in the same manner as permits are revoked pursuant to section 77-2705.

**Source:** Laws 1981, LB 253, § 16; Laws 1993, LB 203, § 13; Laws 1995, LB 581, § 1.

**Cross References**

* Nebraska Revenue Act of 1967, see section 77-2701.

**81-1560.02. Litter fee; retailer; products subject to fee.**

The fee imposed by section 81-1560.01 shall be calculated only on the gross proceeds of sales of products falling into the following categories:

(1) Food for human consumption, beverages, soft drinks, carbonated water, liquor, wine, beer, and other malt beverages, unless sold by retailers solely for consumption indoors on the retailer's premises;

(2) Food for pet consumption;

(3) Cigarettes and other tobacco products;

(4) Household paper and household paper products;

(5) Cleaning agents; and

(6) Kitchen supplies.

**Source:** Laws 1981, LB 253, § 17; Laws 1993, LB 203, § 14.

**81-1560.03. Litter fee; payment; nonduplication.**

Any person engaged in business as both a manufacturer and a retailer or as both a wholesaler and a retailer shall pay the fee either under section 81-1559 or 81-1560.01, whichever is greater. No person shall be required to pay a fee more than once on the same item or product under the Nebraska Litter Reduction and Recycling Act.

**Source:** Laws 1981, LB 253, § 18; Laws 1993, LB 203, § 15.

**81-1560.04. Litter fee; taxable and nontaxable sales; calculation.**

In lieu of requiring each license holder to separately account for taxable and nontaxable sales under sections 81-1560.01 and 81-1560.02, the Tax Commissioner shall provide by rule and regulation that the tax imposed under section 81-1560.01 may be reported and paid based on a percentage of the sales for a particular type of business if the Tax Commissioner determines that the percentage reasonably approximates the taxable activity of the particular type of business.

**Source:** Laws 1993, LB 203, § 16.

**81-1561. Litter Fee Collection Fund; created; Nebraska Litter Reduction and Recycling Fund; distribution; procedure; purposes.**

(1) The Tax Commissioner shall deduct and withhold from the litter fee collected a fee sufficient to reimburse himself or herself for the cost of collecting and administering the litter fee and shall deposit such collection fee in the Litter Fee Collection Fund which is hereby created. The Litter Fee Collection Fund shall be appropriated to the Department of Revenue. Any money in the Litter Fee Collection 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.

(2) The Tax Commissioner shall remit the balance of the litter fee collections to the Department of Environmental Quality. The department shall allocate and distribute funds from the Nebraska Litter Reduction and Recycling Fund in percentage amounts to be determined by the council on an annual basis, after a public hearing on a date to be determined by the council, for the following activities:

(a) Programs of public education, motivation, and participation aimed at creating an ethic conducive to the reduction of litter, establishing an attitude against littering and a desire for a clean environment, and securing greater awareness of and compliance with antilitter laws. Such programs shall include:

(i) The distribution of informative materials to elementary and secondary schools;

(ii) The purchase and erection of roadside signs;

(iii) The organization and operation of cleanup drives conducted by local agencies and organizations using volunteer help;

(iv) Grants to state and local government units and agencies and private organizations for developing and conducting antilitter programs; and

(v) Any other public information method selected by the department, including the use of media;

(b) Cleanup of public highways, waterways, recreation lands, urban areas, and public places within the state, including, but not limited to:

(i) Grants to cities and counties for payment of personnel employed in the pickup of litter;

(ii) Grants for programs aimed at increasing the use of youth and unemployed persons in seasonal and part-time litter pickup programs and to establish work release and other programs to carry out the purposes of the Nebraska Litter Reduction and Recycling Act;

(iii) Grants to public and private agencies and persons to conduct surveys of amounts and composition of litter and rates of littering; and

(iv) Grants to public and private agencies and persons for research and development in the fields of litter reduction, removal, and disposal, including the evaluation of behavioral science techniques in litter control and the development of new equipment, and to implement such research and development when appropriate; and

(c) New or improved community recycling and source separation programs, including, but not limited to:

(i) Expansion of existing and creation of new community recycling centers;

(ii) Expansion of existing and creation of new source separation programs;

(iii) Research and evaluation of markets for the materials and products recovered in source separation and recycling programs; and

(iv) Providing advice and assistance on matters relating to recycling and source separation, including information and consultation on available technology, operating procedures, organizational arrangements, markets for materials and products recovered in recycling and source separation, transportation alternatives, and publicity techniques.

**Source:** Laws 1979, LB 120, § 28; Laws 1981, LB 253, § 21; Laws 1985, LB 273, § 69; Laws 1993, LB 3, § 53; Laws 1993, LB 203, § 17; Laws 1994, LB 1066, § 114; Laws 2003, LB 408, § 5; Laws 2005, LB 426, § 17.

**Cross References**

* Nebraska Capital Expansion Act, see section 72-1269.
* Nebraska State Funds Investment Act, see section 72-1260.

**81-1562. Annual grants; separate application.**

All grants under section 81-1561 shall be made on an annual basis. A separate application shall be required for each grant sought.

**Source:** Laws 1979, LB 120, § 29.

**81-1563. Grant recipients; periodic reports.**

The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by grant recipients to insure that the purposes of the Nebraska Litter Reduction and Recycling Act are being achieved.

**Source:** Laws 1979, LB 120, § 30; Laws 1981, LB 253, § 22; Laws 1993, LB 203, § 18.

**81-1564. Repealed. Laws 1981, LB 253, § 26.**

**81-1565. Funds; department; adopt eligibility guidelines for recipients.**

The department shall adopt guidelines for the determination of eligibility of public and private agencies and persons to receive funds pursuant to the Nebraska Litter Reduction and Recycling Act and the determination of qualification and suitability of plans submitted by such agencies and persons consistent with the purposes of the act.

**Source:** Laws 1979, LB 120, § 32; Laws 1981, LB 253, § 23; Laws 1993, LB 203, § 19.

**81-1566. Act; termination; extension; considerations.**

The Nebraska Litter Reduction and Recycling Act shall terminate on October 30, 2020, unless extended by the Legislature. In order to determine whether such extension shall occur, the department shall review and evaluate the extent to which the purposes of the act have been and are being achieved and the need for continuation of the program and requirements established by the act. Such review and evaluation shall be completed at least six months prior to the date established by this section for termination of the act.

**Source:** Laws 1979, LB 120, § 33; Laws 1981, LB 253, § 24; Laws 1985, LB 127, § 1; Laws 1992, LB 1257, § 93; Laws 2001, LB 337, § 1; Laws 2005, LB 33, § 1; Laws 2010, LB798, § 1; Laws 2014, LB844, § 1.

**Effective Date: July 18, 2014**

Paunch Manure Plant Restriction

**14-818. Paunch manure, rendering, or sewage plant; refuse area; establish; residential area; restriction.**

After July 19, 1980, no person shall establish a paunch manure, rendering, or sewage treatment plant or facility, or an area where refuse, garbage, or rubbish is disposed of within three thousand three hundred feet of a residential area in a metropolitan-class city. For purposes of this section residential area shall mean an area designated as residential under the zoning authority of the city.

**Source: Laws** 1980, LB 853, § 15.

Plastic Container Coding Act

**69-2501. Act, how cited.**

Sections 69-2501 to 69-2507 shall be known and may be cited as the Plastic Container Coding Act.

**Source:** Laws 1993, LB 63, § 1.

**69-2502. Terms, defined.**

For purposes of the Plastic Container Coding Act:

(1) Code shall mean a molded, imprinted, or raised symbol on or near the bottom of a plastic bottle or rigid plastic container;

(2) Department shall mean the Department of Environmental Quality;

(3) Plastic shall mean any material made of polymeric organic compounds and additives that can be shaped by flow;

(4) Plastic bottle shall mean a plastic container intended for a single use that:

(a) Has a neck smaller than the body of the container;

(b) Is designed for a screw-top, snap cap, or other closure; and

(c) Has a capacity of not less than sixteen fluid ounces or more than five gallons; and

(5) Rigid plastic container shall mean any formed or molded container intended for a single use, composed predominately of plastic resin, that has a relatively inflexible finite shape or form with a capacity of not less than eight ounces or more than five gallons. Rigid plastic container shall not include a plastic bottle.

**Source:** Laws 1993, LB 63, § 2.

**69-2503. Conformity with industry standards; codes required; department; duties.**

(1) This section and any rules or regulations adopted and promulgated under the Plastic Container Coding Act shall be interpreted to conform with nationwide plastics industry standards.

(2) No person shall manufacture or distribute a plastic bottle or rigid plastic container unless such bottle or container is imprinted with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The codes shall be:

(a) 1 and PETE, representing polyethylene terephthalate;

(b) 2 and HDPE, representing high density polyethylene;

(c) 3 and V, representing vinyl;

(d) 4 and LDPE, representing low density polyethylene;

(e) 5 and PP, representing polypropylene;

(f) 6 and PS, representing polystyrene; and

(g) 7 and OTHER.

(4) The department shall maintain a list of the symbols and provide a copy of the list to any person on request.

**Source:** Laws 1993, LB 63, § 3.

**69-2504. Violations; penalty; enforcement duties.**

(1) After being notified by the department that a plastic bottle or rigid plastic container does not comply with section 69-2503 or the rules and regulations promulgated under such section, a person violating such section shall be subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from further violations.

(2) For any violation of section 69-2503 or the rules and regulations promulgated under the Plastic Container Coding Act, the Attorney General or county attorney shall institute proceedings to recover the civil penalty imposed under this section.

**Source:** Laws 1993, LB 63, § 4.

**69-2505. Environmental Quality Council; adopt rules and regulations.**

The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Plastic Container Coding Act.

**Source:** Laws 1993, LB 63, § 5.

**69-2506. Administrative costs; limitation; payment.**

Administrative costs incurred in implementing the Plastic Container Coding Act shall not exceed five thousand dollars and shall be paid solely from the Integrated Solid Waste Management Cash Fund.

**Source:** Laws 1993, LB 63, § 6.

**69-2507. Act; applicability.**

The Plastic Container Coding Act shall apply to plastic bottles and rigid plastic containers manufactured or distributed on or after January 1, 1994.

**Source:** Laws 1993, LB 63, § 7; Laws 2000, LB 819, § 83.

Solid Waste Disposal

**13-1701. Terms, defined.**

For purposes of sections 13-1701 to 13-1714 and 76-2,119:

(1) Applicant shall mean any person as defined in section 81-1502 who is required to obtain a permit from the department for a solid waste disposal area or a solid waste processing facility but shall not include any person applying for renewal of such a permit or any person as defined in such section who proposes to dispose of waste which he or she generates on property which he or she owns as of January 1, 1991;

(2) Department shall mean the Department of Environmental Quality;

(3) Solid waste disposal area shall mean an area used for the disposal of solid waste from more than one residential premises or from one or more recreational, commercial, industrial, manufacturing, or governmental operations; and

(4) Solid waste processing facility shall mean an incinerator or a compost plant receiving material, other than yard waste, in quantities greater than one thousand cubic yards annually.

**Source: Laws** 1991, LB 813, § 1; Laws 1992, LB 1257, § 59.

**13-1702. Request for siting approval.**

Prior to submitting an application to the department for a solid waste disposal area or solid waste processing facility, the applicant shall submit a request for siting approval to the city council, village board of trustees, or county board of commissioners or supervisors which governs the city, village, or county in which the proposed site is to be located. The city council, village board, or county board shall approve or disapprove the site for each solid waste disposal area or solid waste processing facility.

**Source: Laws** 1991, LB 813, § 2.

**13-1703. Criteria.**

An applicant for siting approval shall submit information to the city council, village board of trustees, or county board of commissioners or supervisors to demonstrate compliance with the requirements of this section regarding a solid waste disposal area or solid waste processing facility. Siting approval shall be granted only if the proposed area or facility meets all of the following criteria:

(1) The solid waste disposal area or solid waste processing facility is necessary to accommodate the solid waste management needs of the area which the solid waste disposal area or solid waste processing facility is intended to serve;

(2) The solid waste disposal area or solid waste processing facility is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected. The applicant shall provide an evaluation of the potential for adverse health effects that could result from exposure to pollution, in any form, due to the proper or improper construction, operation, or closure of the proposed solid waste disposal area or solid waste processing facility;

(3) The solid waste disposal area or solid waste processing facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council, village board, or county board shall consider the advice of the appropriate planning commission regarding the application;

(4) The plan of operations for the solid waste disposal area or solid waste processing facility is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents;

(5) The traffic patterns to or from the solid waste disposal area or solid waste processing facility are designed to minimize the impact on existing traffic flows; and

(6) Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council, village board, or county board. If a corporation, a parent company or subsidiary thereof, or any officer or board member of the corporation or the parent company or subsidiary applying for approval has been convicted of a felony within ten years of the date the application is filed, site approval shall not be granted.

**Source: Laws** 1991, LB 813, § 3; Laws 1992, LB 1257, § 60.

**13-1704. Notice to property owners; publication; failure to notify; effect.**

No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request for siting approval to be served either in person or by registered or certified mail on the owners of all property within the proposed site area not solely owned by the applicant and on the owners of all property within one thousand feet in each direction of the lot line of the proposed site if the proposed site is inside or within three miles of the corporate limits of a city or village or on the owners of all property within two miles in each direction of the lot line of the proposed site for all other proposed sites. The owners shall be identified based upon the tax records of the county in which the proposed site is located.

Written notice shall be published in a newspaper of general circulation in the county in which the proposed site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the solid waste disposal area or solid waste processing facility, the probable life of the proposed solid waste disposal area or solid waste processing facility, the date when the request for siting approval will be submitted, and a description of the right of persons to comment on the request.

Failure to notify all landowners and failure to include all information in the publicized notice as required by this section shall not be considered noncompliance if a good faith effort at notice was made by the applicant which results in actual notice to substantially all parties required to be notified.

**Source: Laws** 1991, LB 813, § 4; Laws 1992, LB 1257, § 61.

**13-1705. Request for siting approval; filing requirements; comments.**

An applicant shall file a copy of its request for siting approval with the city council, village board of trustees, or county board of commissioners or supervisors of the city, village, or county in which the proposed site is located. The request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed solid waste disposal area or solid waste processing facility. All documents or other materials pertaining to the proposed area or facility on file with the city council, village board, or county board shall be made available for public inspection at the office of the city council, village board, or county board and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction.

Any person may file written comment with the city council, village board, or county board concerning the appropriateness of the proposed site for its intended purpose. Such comment shall be postmarked not later than thirty days after the date of the last public hearing held pursuant to section 13-1706 and shall be included in the record of the public hearing.

**Source: Laws** 1991, LB 813, § 5.

**13-1706. Public hearing; procedure.**

At least one public hearing shall be held by the city council, village board of trustees, or county board of commissioners or supervisors no sooner than ninety days but no later than one hundred twenty days after receipt of the request for siting approval. A hearing shall be preceded by published notice in a newspaper of general circulation in the county, city, or village in which the proposed site is located. The public hearing shall develop a record sufficient to form the basis of an appeal of the decision.

**Source: Laws** 1991, LB 813, § 6.

**13-1707. Final action; when required; amended application.**

Final action shall be taken by the city council, village board, or county board within one hundred eighty days after the filing of the request for site approval.

At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council, village board, or county board and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to section 13-1710. The time limitations prescribed in sections 13-1706 and 13-1708 for final action on an amended application shall be extended for an additional ninety days.

**Source: Laws** 1991, LB 813, § 7.

**13-1708. Construction commencement date.**

Construction of a solid waste disposal area or solid waste processing facility which is granted siting approval pursuant to sections 13-1701 to 13-1714 and 76-2,119 shall commence within two calendar years from the date approval was granted, or the approval shall be nullified. If the siting decision is appealed, the two-year period shall begin on the date upon which the appeal process is concluded.

**Source: Laws** 1991, LB 813, § 8.

**13-1709. Procedures; exclusive.**

The siting approval procedures, criteria, and appeal procedures provided for in sections 13-1701 to 13-1714 shall be the exclusive siting procedures and appeal procedures. Local zoning ordinances, other local land-use requirements, and other ordinances or resolutions shall be considered in such siting decisions.

**Source: Laws** 1991, LB 813, § 9; Laws 1992, LB 1257, § 62.

**13-1710. Fee.**

A city council, village board of trustees, or county board of commissioners or supervisors shall charge an applicant for siting approval a fee in an amount equal to the reasonable and necessary costs incurred by the city, village, or county in the siting approval process.

**Source: Laws** 1991, LB 813, § 10.

**13-1711. Reapplication; restriction.**

An applicant shall not file a request for siting approval which is substantially the same as a request which was denied within the immediately preceding two years.

**Source: Laws** 1991, LB 813, § 11.

**13-1712. Disapproval; hearing before district court.**

If the city council, village board of trustees, or county board of commissioners or supervisors does not approve a request for siting approval pursuant to sections 13-1701 to 13-1714 and 76-2,119, the applicant, within sixty days after notice of the decision, may petition for a hearing before the district court of the county in which the proposed site is located to contest the decision. The city council, village board, or county board shall appear as respondent in the hearing. At the hearing, the burden of proof shall be on the petitioner. In making its orders and determinations under this section, the district court shall consider the written decision and reasons for the decision of the city council, village board, or county board and the transcribed record of the hearing held pursuant to section 13-1706. The district court shall transmit a copy of its decision to the office of the city council, village board, or county board where it shall be available for public inspection and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction. Final action by the district court shall be taken within one hundred twenty days.

**Source: Laws** 1991, LB 813, § 12.

**13-1713. Approval; contest; hearing before district court.**

If the city council, village board of trustees, or county board of commissioners or supervisors grants approval pursuant to sections 13-1701 to 13-1714 and 76-2,119, a third party other than the applicant who participated in the public hearing may petition the district court of the county in which the proposed site is located within sixty days after the filing of the written decision by the city council, village board, or county board for a hearing to contest the approval. Unless the district court determines that the petition is duplicitous or frivolous, the district court shall hear the petition in accordance with the procedures prescribed in section 13-1712. The burden of proof shall be on the petitioner, and the city council, village board, or county board and the applicant shall be named as correspondents.

The district court shall transmit a copy of its decision to the office of the city council, village board, or county board where it shall be available for public inspection and may be copied upon payment of a fee in an amount equal to the actual cost of reproduction.

**Source: Laws** 1991, LB 813, § 13.

**13-1714. Approval; contest; filing fee.**

Any person who files a petition with the district court to contest a decision of the city council, village board of trustees, or county board of commissioners or supervisors shall pay the required filing fee.

**Source: Laws** 1991, LB 813, § 14.

Solid Waste Landfill Closure Assistance Fund

**81-15,177. Solid Waste Landfill Closure Assistance Fund; established; use; investment; council; grants; duties.**

(1) There is hereby established the Solid Waste Landfill Closure Assistance Fund which shall be a cash fund administered by the Department of Environmental Quality. The fund shall be used:

(a) To provide grants for landfill site closing assessment, closure, monitoring, and remediation costs related to landfills existing or already closed on July 15, 1992; and

(b) To provide funds to the department for expenses incurred in carrying out its duties under sections 81-15,178 and 81-15,179.

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. Within five days after February 23, 2002, the State Treasurer shall transfer the balance of the fund to the Low-Level Radioactive Waste Cash Fund.

(2) The Environmental Quality Council shall adopt and promulgate rules and regulations regarding the form and procedure for applications for grants from the fund, procedures for determining claims for payment or reimbursement, procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund, procedures for determining priority among applicants, procedures for auditing persons who have received payments from the fund, and other provisions necessary to carry out sections 81-15,178 and 81-15,179.

**Source:** Laws 1992, LB 1257, § 54; Laws 1994, LB 1022, § 1; Laws 1994, LB 1066, § 125; Laws 1998, LB 924, § 45; Laws 2002, LB 1101, § 1.

**Cross References**

* Nebraska Capital Expansion Act, see section 72-1269.
* Nebraska State Funds Investment Act, see section 72-1260.

**81-15,177.01. Solid Waste Landfill Closure Assistance Fund; applicant, defined.**

For purposes of sections 81-15,177 to 81-15,179, applicant shall mean any political subdivision which owns or operates or has previously owned or operated a landfill or any entity which owns or operates or has previously owned or operated a licensed landfill in the State of Nebraska.

**Source:** Laws 1994, LB 1022, § 2.

**81-15,178. Funding from Solid Waste Landfill Closure Assistance Fund; applicant; requirements.**

In order for an applicant to receive funding from the Solid Waste Landfill Closure Assistance Fund, the applicant shall:

(1) Agree to use the funds for landfill site closing assessment, closure, monitoring, or remediation costs relating to landfills existing or already closed on July 15, 1992;

(2) Provide the Department of Environmental Quality with documentation regarding the landfill closure site, including, when appropriate, information indicating that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands;

(3) Provide a plan for the proposed project, including appropriate engineering, economic, and financial feasibility data and other data and information, including estimated costs, as may be required by the department; and

(4) Demonstrate the anticipated environmental and ecological benefits resulting from the proposed project.

**Source:** Laws 1992, LB 1257, § 55; Laws 1994, LB 1022, § 3.

**81-15,179. Application for funds; department; powers and duties.**

Upon receipt of an application for funds from the Solid Waste Landfill Closure Assistance Fund, the Department of Environmental Quality shall evaluate and investigate all aspects of the proposed project and the proposed schedule for completion, determine eligibility and priority of the project for funding, and make appropriate grants from the fund pursuant to rules and regulations adopted and promulgated by the Environmental Quality Council. If the department determines that an application is unsatisfactory or does not contain adequate information, the department shall return the application to the applicant and may make recommendations to the applicant which the department considers necessary to make the plan or the application satisfactory.

**Source:** Laws 1992, LB 1257, § 56.

Solid Waste Management Plan

**81-15,166. Comprehensive plan; department; duties; legislative intent; Environmental Quality Council; duties.**

The Department of Environmental Quality, with the advice and consent of the Environmental Quality Council, shall contract for the preparation of a comprehensive solid waste management plan. Such plan shall be contracted for and prepared on or before December 15, 1991.

It is the intent of the Legislature that in preparation of the plan the state consider the following hierarchy of criteria: (1) Volume reduction at the source; (2) recycling, reuse, and vegetative waste composting; (3) incineration with energy resource recovery; (4) incineration for volume reduction; and (5) land disposal.

It is the intent of the Legislature that the plan be used as a guide to assist political subdivisions in the planning and implementation of their individual, joint, or regional solid waste management systems. The comprehensive solid waste management plan shall not supersede or impair plans, agreements, or contracts initiated by political subdivisions prior to December 15, 1991.

The Environmental Quality Council shall adopt and promulgate rules and regulations for solid waste management options which comply with Environmental Protection Agency rules and guidelines, including rules and guidelines promulgated pursuant to the 1984 Hazardous and Solid Waste Amendments to Subtitle D of the federal Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.

**Source:** Laws 1990, LB 163, § 9; Laws 1991, LB 325, § 2; Laws 1993, LB 3, § 71.

Waste Reduction and Recycling Incentive Act

**81-15,158.01. Act, how cited.**

Sections 81-15,158.01 to 81-15,165 shall be known and may be cited as the Waste Reduction and Recycling Incentive Act.

**Source:** Laws 1994, LB 1034, § 4; Laws 1997, LB 495, § 6.

**81-15,159. Legislative findings and intent; state purchases; preference requirements.**

(1) The Legislature hereby finds and declares that:

(a) Some landfills operating with or without a permit in Nebraska exhibit numerous operational and management practices which are inconsistent with proper landfill management and permit requirements, and the owners and operators of such landfills should be encouraged to cooperate and work with the Department of Environmental Quality to ensure that the air, land, and water of this state are not polluted;

(b) Some landfills in Nebraska are reaching capacity and the siting of a new location can be a financially expensive and socially disruptive process, and because of this situation all Nebraska citizens and businesses are encouraged to implement waste reduction measures that will result in a reduction of waste entering landfills by at least twenty-five percent;

(c) Recycling and waste reduction are necessary components of any well-managed waste management system and can extend the lifespan of a landfill and provide alternative waste management options; and

(d) The state can encourage recycling by the example of its own purchase and use of recycled and recyclable materials. The state can also encourage recycling and waste reduction by the creation of funding grants which support existing and future waste management systems.

(2) It is the intent of the Legislature that the state, as a major consumer and an example for others, should assist resource recovery by making a concerted effort to use recyclable and recycled products and encourage other levels of government and the private sector to follow its example. When purchasing products, materials, or supplies for use by the State of Nebraska, the Department of Administrative Services, the University of Nebraska, and any other state agency making such purchases shall give preference to and purchase products, materials, and supplies which are manufactured or produced from recycled material or which can be readily reused or recycled after their normal use. Preference shall also be given to the purchase of corn-based biodegradable plastics and road deicers, depending on the availability and suitability of such products. Such preference shall not operate when it would result in the purchase of products, materials, or supplies which are of inadequate quality or substantially higher cost.

**Source:** Laws 1990, LB 163, § 1; Laws 1992, LB 1257, § 94.

**81-15,159.01. Repealed. Laws 2003, LB 143, § 15.**

**81-15,159.02. Terms, defined.**

For purposes of the Waste Reduction and Recycling Incentive Act:

(1) Council means the Environmental Quality Council;

(2) Department means the Department of Environmental Quality;

(3) Director means the Director of Environmental Quality;

(4) Scrap tire or waste tire means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect;

(5) Tire means any tire made of rubber or other resilient material and normally used on any vehicle;

(6) Tire-derived product means the usable product produced from a scrap tire. Tire-derived product does not include crumb rubber or chipped tires not intended for a direct end use and does not include baled tires or tire-derived fuel; and

(7) Tire retailer means a person, business, or other entity which engages in the retail sale of tires in any quantity for any use or purpose by the purchaser other than for resale.

**Source:** Laws 1994, LB 1034, § 6; Laws 1997, LB 495, § 8; Laws 2003, LB 143, § 10.

**81-15,160. Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.**

(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) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate combustible 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; and

(i) Grants for reimbursement of costs to cities of the second class, villages, and counties of five thousand or fewer population for the deconstruction of abandoned buildings. Eligible deconstruction costs will be related to the recovery and processing of recyclable or reusable material from the abandoned buildings.

(3) Grants up to one million five hundred thousand dollars annually shall be available until June 30, 2019, 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) 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;

(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 May 31, 2001, 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;

(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;

(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;

(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;

(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;

(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 and disposal sites.

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

(4) 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.

(5) 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.

(6) Any person who stores waste tires in violation of section 13-2033, which storage is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

(7) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the Waste Reduction and Recycling Incentive Fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Waste Reduction and Recycling Incentive 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.

**Source:** Laws 1990, LB 163, § 2; Laws 1992, LB 1257, § 95; Laws 1993, LB 203, § 20; Laws 1993, LB 444, § 1; Laws 1994, LB 1034, § 7; Laws 1994, LB 1066, § 122; Laws 1997, LB 495, § 9; Laws 1999, LB 592, § 3; Laws 2001, LB 461, § 16; Laws 2002, Second Spec. Sess., LB 1, § 7; Laws 2003, LB 143, § 11; Laws 2007, LB568, § 3; Laws 2009, LB180, § 2; Laws 2009, LB379, § 1; Laws 2009, First Spec. Sess., LB3, § 78; Laws 2013, LB549, § 1.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

**81-15,161. Waste Reduction and Recycling Incentive Fund; grants; application; contents; director and council; duties; rules and regulations.**

(1) Allocations from the Waste Reduction and Recycling Incentive Fund may be made as grants to a political subdivision or other entity or organization, public, private, or nonprofit, when it is found that the proposed program, project, or study appears to benefit the general public, to further the goals of waste reduction and recycling, and to be consistent with proper waste management practices. Each application for a grant under the Waste Reduction and Recycling Incentive Act shall be filed with the department in a manner and form prescribed by the department.

(2) The council shall adopt guidelines for the determination of eligibility of public, private, and nonprofit entities, organizations, or persons to receive funds pursuant to the act and for the determination of qualification and suitability of plans submitted by such entities, organizations, and persons consistent with the act.

(3) An application for a grant shall: (a) Describe the nature and purpose of the proposed program, project, or study; (b) set forth or be accompanied by a plan for development of the proposed program, project, or study, together with engineering, economic, and financial feasibility data and information and such estimated costs of construction or implementation as may be required by the department; (c) state whether money other than that for which the application is made will be used to help in meeting program, project, or study costs and whether such money is available or has been sought for this purpose; (d) when appropriate, state that the applicant holds or can acquire title to all lands or has the necessary easements and rights-of-way for the project and related lands; (e) show that the applicant possesses all necessary authority to undertake or participate in the proposed program, project, or study; and (f) demonstrate the probable environmental and ecological consequences that may result from the proposed program or project. Upon receipt of an application the director shall evaluate and investigate all aspects of the proposed program, project, or study and the proposed schedule for the development and completion of such program, project, or study and determine the eligibility of the program, project, or study for funding. As a part of his or her investigation, the director shall consider whether the plan for development of the program, project, or study is satisfactory. If the director determines that the plan is unsatisfactory or that the application does not contain adequate information upon which to make determinations, the director shall return the application to the applicant and may make recommendations to the applicant which the director considers necessary to make the plan or the application satisfactory.

(4) The director shall within a reasonable time, not to exceed six months, after receipt of such application approve or reject grant funding for the program, project, or study. The grant shall be for a specific dollar amount of funds, and the funds shall be used only for the purpose specified in the grant. The director may set any terms for the administration of the funds as he or she deems necessary and any penalties to be imposed upon the recipient if it fails to comply with any requirements of the grant.

(5) It is the intent of the Legislature that allocations from the Waste Reduction and Recycling Incentive Fund shall be made in an equitable manner which maximizes the benefits of the fund. When awarding grants, the director shall balance the needs of: (a) All geographic areas of the state; (b) all sizes and classes of communities; and (c) all manner and scale of programs, projects, and studies. The director shall also give consideration to eligible programs, projects, and studies which would specifically employ disabled or handicapped persons.

(6) The director may deny any application which he or she determines (a) is not in conformance with this section, (b) does not reflect reasonable costs for the type of project proposed, (c) contains inaccurate, incomplete, or misleading information in the application, or (d) would require the expenditure of funds beyond the fund's unobligated balance or for any other reason which the director determines is necessary to properly administer this section.

(7) All disbursements made under this section shall be formalized by a written agreement between the department and all recipients of the disbursement. The agreement may include, but need not be limited to, the following conditions designed to protect the fund and ensure completion of the project: (a) Mechanics of funding disbursement; (b) any bidding requirements; (c) completion timelines for any deliverables; (d) record-keeping and reporting requirements; (e) security interest and insurance requirements on equipment; (f) forfeiture and repayment of funds; and (g) other conditions necessary or desirable to carry out this section.

(8) The council shall adopt and promulgate rules and regulations to carry out the Waste Reduction and Recycling Incentive Act.

**Source:** Laws 1990, LB 163, § 3; Laws 1991, LB 325, § 1; Laws 1993, LB 3, § 70; Laws 1993, LB 444, § 2; Laws 1994, LB 1034, § 8; Laws 1997, LB 495, § 10; Laws 2003, LB 143, § 12.

**81-15,161.01. Repealed. Laws 2003, LB 143, § 15.**

**81-15,162. Fees on tires; collection; disbursement.**

(1) There is hereby imposed a fee of one dollar on each tire of every new motor vehicle, trailer, or semitrailer sold at retail in this state. Such fee shall be collected by the county treasurer at the time of registration of the motor vehicle, trailer, or semitrailer and remitted to the Department of Revenue.

(2) There is hereby imposed a fee of one dollar on every tire sold at retail in this state, including every farm tractor tire, which tires are not on a motor vehicle, trailer, or semitrailer pursuant to subsection (1) of this section. Such fee shall be collected from the purchaser by the tire retailer at the time of purchase and shall be remitted to the Department of Revenue.

(3) For purposes of this section, tire shall have the definition found in section 81-15,159.02 and shall include a pneumatic and solid tire but shall not include a recapped or regrooved tire.

(4) Subject to section 81-15,165, the fees remitted to the Department of Revenue under this section shall be remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund. Fees collected in excess of one million five hundred thousand dollars shall be available for grants to political subdivisions under rules and regulations adopted pursuant to subdivision (6)(b)(i) of section 13-2042.

**Source:** Laws 1990, LB 163, § 4; Laws 1994, LB 1034, § 10; Laws 1999, LB 592, § 4; Laws 2003, LB 143, § 13; Laws 2011, LB29, § 3; Laws 2013, LB549, § 2.

**81-15,162.01. Repealed. Laws 2003, LB 143, § 15.**

**81-15,162.02. Repealed. Laws 2003, LB 143, § 15.**

**81-15,162.03. Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.04. Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.05. Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.06. Repealed. Laws 1997, LB 495, § 16.**

**81-15,162.07. Grant recipients; reports required.**

The department shall require periodic reports to be filed by grant recipients to enable the department to review and follow up on actions taken by recipients to ensure that the purposes of the Waste Reduction and Recycling Incentive Act are achieved.

**Source:** Laws 1994, LB 1034, § 17; Laws 1997, LB 495, § 13.

**81-15,162.08. Repealed. Laws 2003, LB 143, § 15.**

**81-15,163. Annual waste reduction and recycling fee; amount; collection.**

There is hereby imposed an annual waste reduction and recycling fee of twenty-five dollars on all businesses engaged in business in this state with retail sales of tangible personal property of fifty thousand dollars or more, which sales are subject to the tax imposed by the Nebraska Revenue Act of 1967. For all fee periods beginning on or after July 1, 1999, the twenty-five-dollar fee shall be paid for each business location of such business in this state if the retail sales of tangible personal property for the location are fifty thousand dollars or more. Subject to section 81-15,165, the fee shall be collected by the Department of Revenue and remitted to the State Treasurer for credit to the Waste Reduction and Recycling Incentive Fund.

**Source:** Laws 1990, LB 163, § 5; Laws 1993, LB 203, § 21; Laws 1999, LB 59, § 1.

**Cross References**

* **Nebraska Revenue Act of 1967,** see section 77-2701.

**81-15,164. Collection of fees; manner.**

(1) Except as provided in subsections (2) and (3) of this section, the fees imposed by sections 81-15,159 to 81-15,165 shall be collected in the same manner as the sales tax under the Nebraska Revenue Act of 1967, including provisions of the act relating to interest, penalties, and collection procedures. No fees shall be charged for any permits under section 81-15,162, and no collection fees shall be allowed any retailer.

(2) The fees imposed by section 81-15,162 shall be due and payable to the Tax Commissioner monthly on or before the twenty-fifth day of the month next succeeding each monthly period.

(3) The fees imposed by section 81-15,163 shall be collected in the same manner as the litter fee under the Nebraska Litter Reduction and Recycling Act, including provisions of the act relating to due dates, interest, penalties, and collection procedures. No fees shall be charged for any permits, and no collection fees shall be allowed any retailer.

**Source:** Laws 1990, LB 163, § 6; Laws 1993, LB 203, § 22; Laws 1994, LB 1034, § 18; Laws 1999, LB 59, § 2; Laws 2011, LB210, § 13.

**Cross References**

* **Nebraska Litter Reduction and Recycling Act,** see section 81-1534.
* **Nebraska Revenue Act of 1967,** see section 77-2701.

**81-15,165. Tax Commissioner; collection fee; Waste Reduction and Recycling Incentive Fees Collection Fund; created; investment.**

The Tax Commissioner shall deduct and withhold from the fees collected pursuant to sections 81-15,159 to 81-15,165 a fee sufficient to reimburse himself or herself for the actual cost of collecting and administering such fees and shall credit such collection fee to the Waste Reduction and Recycling Incentive Fees Collection Fund which is hereby created. The Legislature shall appropriate money from the fund to the Department of Revenue to cover the actual costs of the department in administering the Waste Reduction and Recycling Incentive Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Waste Reduction and Recycling Incentive Fees Collection 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.

**Source:** Laws 1990, LB 163, § 7; Laws 1993, LB 203, § 23; Laws 1994, LB 1034, § 19; Laws 1994, LB 1066, § 123; Laws 2009, First Spec. Sess., LB3, § 79.

**Cross References**

* **Nebraska Capital Expansion Act,** see section 72-1269.
* **Nebraska State Funds Investment Act,** see section 72-1260.

54-744.

Dead animals; carcasses; manner of disposition.

(1) Except as set out in subsections (2) and (3) of this section and section [54-776](http://nebraskalegislature.gov/laws/statutes.php?statute=54-776), it is the duty of the owner or custodian of any dead animal to cause such animal, within thirty-six hours after receiving knowledge of the death of such animal, to be:

(a) Buried at least four feet below the surface of the ground or completely incinerated or composted on the premises where such animal dies or on an adjacent property under the ownership and control of the owner or custodian. Any vehicle used by the owner or custodian to transport such dead animal shall be constructed in such a manner that the contents are covered and will not fall, leak, or spill therefrom. Violation of this subdivision is a traffic infraction as defined in section [60-672](http://nebraskalegislature.gov/laws/statutes.php?statute=60-672); or

(b) Transported by a licensed rendering establishment to either a rendering establishment licensed under the Nebraska Meat and Poultry Inspection Law or to a facility with a permit to operate as a landfill under the Integrated Solid Waste Management Act. The operator of a landfill is not required by this subdivision to accept dead animals.

(2) The Department of Agriculture shall regulate the composting of livestock carcasses and shall adopt and promulgate rules and regulations governing the same. Any person incorporating livestock carcasses into a composting facility shall follow the operating procedures established by the Department of Agriculture in consultation with the University of Nebraska Institute of Agriculture and Natural Resources.

(3) An animal carcass or carcass part may be transported by the owner or the owner's agent to a veterinary clinic or veterinary diagnostic laboratory for purposes of performing diagnostic procedures.

(4) In addition to methods listed in subsections (1) and (2) of this section, animal carcasses or carcass parts may be disposed of by a veterinary clinic or veterinary diagnostic laboratory by alkaline hydrolysis tissue digestion. For purposes of this section, alkaline hydrolysis tissue digestion means a process that utilizes an alkaline agent and heat to catalyze the decomposition and reduction of biological tissues. This section shall not exempt the products of alkaline hydrolysis tissue digestion from any applicable law, rule, or regulation governing disposal of wastes.

(5) Carcasses disposed of in compliance with this section or section [54-744.01](http://nebraskalegislature.gov/laws/statutes.php?statute=54-744.01) are exempt from the requirements for disposal of solid waste under the Integrated Solid Waste Management Act.