

ATTACHMENT 1-5

REMEDIAL ACTION PLAN MONITORING ACT STATUTE

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Remedial Action Plan Monitoring Act

81-15,181. Act, how cited.

Sections 81-15,181 to 81-15,188 shall be known and may be cited as the Remedial Action Plan Monitoring Act.

Source: Laws 1994, LB 1349, § 1; Laws 2004, LB 449, § 4. Effective date July 16, 2004.

81-15,182 Terms, defined.

For purposes of the Remedial Action Plan Monitoring Act:

1. Land pollution means 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, solid waste, hazardous waste, petroleum, or hazardous substances, 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; and
2. Water pollution means the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.

Source: Laws 1994, LB 1349, § 2; Laws 2004, LB 449, § 5. Effective date: July 16, 2004.

81-15,183. Remedial Action Plan Monitoring Fund; created; use; investment.

1. The Remedial Action Plan Monitoring Fund is created. The fund shall be administered by the Department of Environmental Quality. Revenue from the following sources shall be credited to the fund:
 - (a) Application fees collected under the Remedial Action Plan Monitoring Act;
 - (b) Deposits for costs associated with administration of the act, including review, oversight, and guidance;
 - (c) Gifts, grants, reimbursements, or appropriations from any source intended to be used for purposes of the act; and
 - (d) Investment interest attributable to the fund.
2. The fund shall be used by the department to:
 - (a) Review applications and provide technical review, oversight, guidance, and other activities associated with remedial action plans for land pollution or water pollution;
 - (b) Fund activities performed by the department to address immediate or emergency threats to human health and the environment related to property under the act; and
 - (c) Administer and enforce the act.
3. 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 1994, LB 1349, § 3; Laws 1995, LB 7, § 130; Laws 2004, LB 449, § 6. Effective date: July 16, 2004.

Cross References: Nebraska Capital Expansion Act, see section 72-1269. Nebraska State Funds Investment Act, see section 72-1260.

81-15,184. Remedial action plan; application for monitoring; requirements; fees; department; duties.

1. Any entity which voluntarily chooses to make application for monitoring of remedial action plans for property where land pollution or water pollution exists shall:
 - (a) Submit an application on a form approved by the Department of Environmental Quality;
 - (b) Provide the department with a nonrefundable application fee of two thousand dollars; and
 - (c) Execute a written agreement to provide reimbursement of all department direct and indirect costs related to technical review, oversight, guidance, and other activities associated with the remedial action plan. As part of the voluntary agreement, the department shall require the applicant to post a deposit of three thousand dollars to be used by the department to cover all costs. The department shall not commence technical review, oversight, guidance, or other activities associated with the remedial action plan until the voluntary agreement is executed and a complete remedial action plan has been submitted. If the costs of the department exceed the initial deposit, an additional amount agreed upon by the department and the applicant may be required prior to proceeding. After the mutual termination of the voluntary agreement, any balance of funds paid under this subdivision shall be refunded.
2. The department shall review and approve or deny all applications and notify the applicant in writing. If the application is denied, the notification shall state the reason for the denial. If the department determines that an application does not contain adequate information, the department shall return the application to the applicant. The applicant has sixty days to resubmit the required information or the application will be deemed denied.
3. Within ninety days of approval of the application, the applicant shall provide a complete remedial action plan for the proposed project that conforms to all federal and state environmental standards and substantive requirements, including:
 - (a) Documentation regarding the investigation of land pollution or water pollution 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;
 - (b) A remedial action work plan which describes the remedial action measures to be taken to address the land or water pollution; and
 - (c) Project monitoring reports, appropriate engineering, scientific, and financial feasibility data, and other data and information as may be required by the department.

Source: Laws 1994, LB 1349, § 4; Laws 2004, LB 449, § 8; Laws 2008, LB 724, § 1. Effective date: July 18, 2008.

81-15,185. Department of Environmental Quality; remedial action plan; approval or disapproval; notification.

Upon receipt of a voluntary remedial action plan for land pollution or water pollution pursuant to section 81-15,184, the Department of Environmental Quality shall review and approve or disapprove the plan and notify the applicant in writing. If the plan is disapproved, the notification shall state the reason for the disapproval and provide a reasonable opportunity to resubmit the plan.

Source: Laws 1994, LB 1349, § 5; Laws 2004, LB 449, § 9. Effective date: July 16, 2004.

81-15,185.01. Remedial action plan; notice; hearing.

The Department of Environmental Quality shall issue public notice of its intent to approve a voluntary remedial action plan pursuant to section 81-15,185 in a local newspaper of general circulation in the area affected and make the remedial action plan available to the public. The public shall have thirty days from the date of publication during which any person may submit written comments to the department regarding the proposed remedial action. Such person may also request or petition the Director of Environmental Quality, in writing, for a hearing and state the nature of the issues to be raised. The director shall hold a public hearing if the comments, request, or petition raise legal, policy, or discretionary questions of general application and significant public interest exists.

Source: Laws 2004, LB 449, § 10. Effective date: July 16, 2004.

81-15,185.02. Remedial action plan; termination; notification.

1. The applicant may unilaterally terminate a voluntary remedial action plan approved pursuant to section 81-15,185 prior to completion of investigative and remedial activities if the applicant leaves the property in no worse condition, from a human health and environment perspective, than when the applicant initiated voluntary remedial action and the applicant reimburses the Department of Environmental Quality for all outstanding costs.
2. The department may terminate a voluntary remedial action plan if the applicant:
 - (a) Violates any terms or conditions of the plan or fails to fulfill any obligations of the plan, including submission of an acceptable remedial action plan within a reasonable period of time;
 - (b) Fails to address an immediate and significant risk of harm to public health and the environment in a timely and effective manner; or
 - (c) Fails to initiate the plan within six months after approval by the department or to complete the plan within twenty-four months after approval by the department, excluding long-term operation, maintenance, and monitoring, unless the department grants an extension of time.
3. The department shall notify the applicant in writing of the intention to terminate the voluntary remedial action plan and include the reason for the termination and a summary of any unreimbursed costs of the department that are due.

Source: Laws 2004, LB 449, § 11. Effective date: July 16, 2004.

81-15,185.03. Remedial action plan; completion; duties; enforceability.

1. Within sixty days after completion of a voluntary remedial action plan approved pursuant to section 81-15,185, the applicant shall provide the Department of Environmental Quality with a final remedial action report and assurance that the plan has been fully implemented. Department approval of a voluntary remedial action plan shall be void upon failure to comply with the approved plan or willful submission of false, inaccurate, or misleading information by the applicant.
2. Voluntary remedial action plans approved under section 81-15,185 are not enforceable unless the department can demonstrate that the applicant has failed to fully implement the approved plan. The department may require further action if such action is authorized by other state statutes administered by the department.

Source: Laws 2004, LB 449, § 12. Effective date: July 16, 2004.

81-15,186. Department of Environmental Quality; issuance of letter; contents.

If the requirements of the Remedial Action Plan Monitoring Act are met and the applicant has remitted all applicable fees, the Department of Environmental Quality may issue to the applicant a letter stating that no further action need be taken at the site related to any contamination for which remedial action has been taken in accordance with the approved remedial action plan. Such letter shall provide that the department may require the person to conduct additional remedial action in the event that any monitoring conducted at or near the real property or other circumstances indicate that (1) contamination is reoccurring, (2) additional contamination is present which was not identified pursuant to section 81-15,184, or (3) additional contamination is present for which remedial action was not taken according to the remedial action plan. As a condition of issuance, the department may require payment of ongoing direct and indirect costs of oversight of any ongoing long-term operation, maintenance, and monitoring.

Source: Laws 1994, LB 1349, § 6; Laws 2004, LB 449, § 13. Effective date: July 16, 2004.

81-15,186.01. Rules and regulations.

The Environmental Quality Council may adopt and promulgate rules and regulations necessary to administer and enforce the provisions of the Remedial Action Plan Monitoring Act.

Source: Laws 2004, LB 449, § 7. Effective date: July 16, 2004.

81-15,187. Act, how construed; indemnification.

The Remedial Action Plan Monitoring Act shall not be construed as an acceptance of liability by the State of Nebraska for activities conducted pursuant to such act. Entities proceeding under such act shall indemnify and hold harmless the State of Nebraska for any further action required by the federal Environmental Protection Agency relating to land pollution or water pollution by an entity.

Source: Laws 1994, LB 1349, § 7.

81-15,188. Act; supplemental to other laws; how construed.

The powers conferred by the Remedial Action Plan Monitoring Act shall be independent of and in addition and supplemental to any other provisions of the laws of the State of Nebraska with reference to the matters covered hereby, and the act shall be considered as a complete and independent act and not as amendatory of or limited by any other provision of the laws of the State of Nebraska.

Source: Laws 1994, LB 1349, § 8.