

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 397

Introduced by Smith, 48; Schrock, 38

Read first time January 12, 2005

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to recycling; to amend section 81-1505.01,
2 Reissue Revised Statutes of Nebraska, and section
3 81-1505, Revised Statutes Supplement, 2004; to adopt the
4 Cathode Ray Tube Device Recycling Act; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known
2 and may be cited as the Cathode Ray Tube Device Recycling Act.

3 Sec. 2. (1) The Legislature finds:

4 (a) The State of Nebraska has an interest in resource
5 conservation, waste minimization, and recycling; and

6 (b) The challenge of providing recycling programs for
7 cathode ray tube devices to households in Nebraska can best be
8 addressed through a product stewardship approach to build a
9 cooperative public-private partnership that shares responsibility
10 among manufacturers, retailers, consumers, and governments.

11 (2) It is the intent of the Legislature to encourage the
12 recycling of cathode ray tube devices and to require that
13 manufacturers of cathode ray tube devices sold in Nebraska provide
14 programs to accept cathode ray tube devices for recycling,
15 refurbishment, or reuse when they are returned by households.

16 Sec. 3. For purposes of the Cathode Ray Tube Device
17 Recycling Act:

18 (1) Department means the Department of Environmental
19 Quality;

20 (2) Cathode ray tube device means a vacuum tube or
21 picture tube and other item integrally attached thereto (a) which
22 is used to convert an electronic signal into a visual image, (b)
23 which is composed primarily of glass, (c) which is the video
24 display component of a television or a computer monitor, and (d)
25 for which the manufacturer has not provided evidence to the
26 department that such device is not hazardous waste as defined in
27 section 81-1502;

28 (3) Household means the occupant of a single detached

1 dwelling unit or of a single unit of a multiple-dwelling unit who
2 has used a cathode ray tube device primarily for personal use;

3 (4) Manufacturer means a person who (a) manufactures
4 cathode ray tube devices to be sold under its own brand as
5 identified by its own brand label or (b) sells cathode ray tube
6 devices manufactured by others under its own brand as identified by
7 its own brand label;

8 (5) Registrant means a manufacturer or an independent
9 party named by a manufacturer that submits the registration
10 required by section 5 of this act;

11 (6) Sale or sell means any transfer for consideration of
12 title or of the right to use, by lease or sales contract, a cathode
13 ray tube device, including, but not limited to, a transaction
14 conducted through a sales outlet, a catalog, or the Internet or any
15 other similar electronic means, either within or outside the state,
16 by a person who conducts the transaction and controls the delivery
17 of the cathode ray tube device to a buyer in Nebraska. The term
18 does not include a wholesale transaction with a distributor or a
19 retailer; and

20 (7) Specified party means the party specified in the
21 registration required by section 5 of this act to whom cathode ray
22 tube devices can be returned for recycling, refurbishment, or
23 reuse.

24 Sec. 4. On and after July 1, 2006, no person shall sell
25 or offer for sale in this state a new cathode ray tube device
26 unless:

27 (1) The seller has submitted to the department a
28 certification that he or she has reviewed the department's web site

1 and has determined that all new cathode ray tube devices the seller
2 will sell or offer for sale are labeled with brand names or brand
3 labels subject to registration statements filed with the department
4 pursuant to section 5 of this act. After the initial submission
5 required by this subsection, the seller shall file such
6 certification annually not later than January 10;

7 (2) The cathode ray tube device is labeled with the name
8 of the manufacturer or the manufacturer's brand label is
9 permanently affixed to the cathode ray tube device; and

10 (3) The cathode ray tube device, with the name of the
11 manufacturer or the manufacturer's brand label, is subject to
12 registration pursuant to section 5 of this act.

13 Sec. 5. (1) Each manufacturer of cathode ray tube
14 devices sold or offered for sale in this state shall register with
15 the department on forms made available by the department or online
16 in a manner provided by the department. The registration shall
17 include a registration fee established by the Environmental Quality
18 Council in rules and regulations adopted under section 81-1505,
19 which fee shall not exceed five hundred dollars, and a
20 certification that the registrant has a program in place that
21 provides that all cathode ray tube devices labeled with the name of
22 the manufacturer or with the manufacturer's brand label can be
23 returned by households in the state to the specified party for
24 recycling, refurbishment, or reuse.

25 (2) The registration shall describe such recycling,
26 refurbishment, or reuse program, which program shall, at a minimum,
27 provide that the registrant will be responsible for recycling,
28 refurbishing, or reusing all cathode ray tube devices labeled with

1 the manufacturer's name or brand label, after return of such
2 cathode ray tube devices by households to the specified party. The
3 recycling, refurbishment, or reuse program shall provide a method
4 or methods for the receipt of cathode ray tube devices which may
5 include (a) direct shipment by common carrier, United States Postal
6 Service, or other shipment service to one or more locations
7 designated by the registrant, (b) return of cathode ray tube
8 devices to one or more collection centers or one or more retail
9 locations designated for such purpose by the registrant, (c)
10 agreements with governmental entities or private for-profit or
11 nonprofit entities, or (d) other methods designated by the
12 registrant which are reasonably available to households.

13 (3) The registration shall state that the registrant or
14 the specified party may not charge for return of a cathode ray tube
15 device by a household.

16 (4) The registration shall describe the processes and
17 methods that will be used by the registrant to recycle, refurbish,
18 or reuse cathode ray tube devices and shall identify any
19 disassembly, physical recovery operation including but not limited
20 to crushing, shredding, grinding, or glass to glass recycling, or
21 other operation that will be used and describe where such
22 disassembly or operation will take place.

23 (5) The registration shall provide a web site or a
24 toll-free telephone number that provides information about the
25 recycling, refurbishment, or reuse program in sufficient detail to
26 permit a household to learn how to return a cathode ray tube device
27 to the specified party for recycling, refurbishment, or reuse. The
28 program described on the web site or the toll-free telephone number

1 shall, at a minimum, be identical to the program described in the
2 registration but may contain additional information.

3 (6) A registrant may partner with one or more
4 manufacturers or other parties to prepare and register with the
5 department a joint program for recycling, refurbishment, or reuse
6 of cathode ray tube devices.

7 (7) The department shall review each registration filed
8 under this section. If the registration does not meet the
9 requirements of this section, the department shall notify the
10 registrant which requirements were not met. Within thirty days
11 after receipt of such notification, the registrant shall file a
12 revised registration addressing the requirements noted by the
13 department.

14 (8) The recycling, refurbishment, and reuse program
15 described in the registration shall apply to cathode ray tube
16 devices returned by households in this state. The program may
17 apply to cathode ray tube devices returned by owners other than
18 households or by households outside the state. For purposes of
19 this subsection, the return of a single cathode ray tube device per
20 day by a person at, or a shipment or delivery of a single cathode
21 ray tube device per day to, a specified party and the receipt of
22 such cathode ray tube device by such specified party shall be
23 deemed to be return of a cathode ray tube device by a household.

24 (9) If the registrant changes the recycling,
25 refurbishment, and reuse program described in the registration,
26 such change shall not become effective until the registrant has
27 submitted a revision of the registration to the department and has
28 revised the information on its web site or toll-free telephone

1 number.

2 (10) On or before April 1 of each year, each registrant
3 shall file a report with the department on the implementation of
4 the recycling, refurbishment, and reuse program described in its
5 registration. The report shall state the total weight of the
6 cathode ray tube devices returned during the preceding year, the
7 total number of cathode ray tube devices recycled, refurbished, or
8 reused during such year, and the processes and methods used to
9 recycle, refurbish, or reuse cathode ray tube devices, specifying
10 any disassembly, physical recovery operation including, but not
11 limited to, crushing, shredding, grinding, or glass to glass
12 recycling, or other operation and a description of where such
13 disassembly or operation took place.

14 (11) Fees collected pursuant to this section shall be
15 remitted to the State Treasurer for credit to the Department of
16 Environmental Quality Cash Fund.

17 Sec. 6. A manufacturer, registrant, or specified party
18 who or which receives a cathode ray tube device for recycling,
19 refurbishment, or reuse is not responsible for any data that may be
20 stored on such cathode ray tube device if an information storage
21 device is included with the cathode ray tube device.

22 Sec. 7. No city, village, county, municipal county,
23 agency as defined in section 13-2004, or other political
24 subdivision may require households to return cathode ray tube
25 devices to a recycling, refurbishment, or reuse program described
26 in a registration under section 5 of this act to the exclusion of
27 other legally available recycling, refurbishment, or reuse
28 programs.

1 Sec. 8. A city, a village, a county, a municipal county,
2 an agency as defined in section 13-2004, or another political
3 subdivision may not adopt, implement, or enforce an ordinance,
4 resolution, rule, or regulation establishing a recycling program or
5 recycling fee for cathode ray tube devices, including any fee
6 applied at the time of purchase of a cathode ray tube device,
7 except as expressly authorized by this section.

8 This section does not prohibit the adoption,
9 implementation, or enforcement of any local ordinance, resolution,
10 rule, or regulation governing curbside or drop-off recycling
11 programs operated by or pursuant to a contract with a city, a
12 village, a county, a municipal county, an agency as defined in such
13 section, or another political subdivision or programs operated
14 under an agreement with a registrant, including actions relating to
15 fees to fund specific local programs. Such fees shall not include
16 any fee applied to the purchase of a cathode ray tube device at the
17 time of purchase.

18 Sec. 9. The department shall:

19 (1) Maintain on its web site the names of registrants
20 under section 5 of this act and the manufacturers' brand names and
21 brand labels that are listed in registrations filed under such
22 section and shall update such information promptly upon receipt of
23 a registration;

24 (2) Establish procedures for the receipt and maintenance
25 of registration statements and certifications filed under the
26 Cathode Ray Tube Device Recycling Act;

27 (3) Make registration statements and certifications filed
28 under the act easily accessible to manufacturers, distributors,

1 retailers, and members of the public; and

2 (4) On or before July 1, 2007, and every three years
3 thereafter, provide a report to the Governor and the Legislature
4 describing the implementation of the act. The report shall
5 describe for the period since the previous report (a) the total
6 weight of cathode ray tube devices returned to each registrant or
7 specified party, (b) a summary of the information in the reports
8 submitted by registrants, (c) programs for return of cathode ray
9 tube devices for recycling, refurbishment, or reuse, (d)
10 information received regarding cathode ray tube devices not being
11 collected by registrants, (e) a description of the outcomes of
12 administrative or judicial enforcement actions, (f) information
13 about cathode ray tube devices disposed of in landfills in
14 Nebraska, and (g) any other information deemed relevant by the
15 department.

16 Sec. 10. (1) A state agency that solicits bids for the
17 purchase or lease of cathode ray tube devices shall require each
18 prospective bidder to certify that all cathode ray tube devices
19 which would be sold or leased to the state agency are, if required,
20 the subject of a registration under section 5 of this act.

21 (2) The bid documents for such contract shall specify
22 that all prospective bidders shall cooperate fully in providing
23 reasonable access to their records and documents in order for the
24 state agency to determine the prospective bidder's compliance with
25 the act.

26 (3) If the successful bidder on a contract under this
27 section is subsequently found to be in violation of the act, the
28 following sanctions apply:

1 (a) The contract shall be voided by the state agency;

2 (b) Such bidder shall be ineligible to bid on any state
3 contract for three years after the date of discovery of the
4 violation; and

5 (c) The Attorney General may bring a civil action in the
6 name of the state to recover any money, property, or benefit
7 obtained by such bidder as a result of the violation.

8 Sec. 11. (1) A city, a village, a county, a municipal
9 county, an agency as defined in section 13-2004, or any other solid
10 waste disposal authority may accept cathode ray tube devices for
11 recycling, refurbishing, or reuse but may not accept cathode ray
12 tube devices for disposal.

13 (2) No person shall dispose of a cathode ray tube device
14 by placing such cathode ray tube device in a solid waste disposal
15 system except for the purpose of recycling.

16 Sec. 12. The Environmental Quality Council, on the
17 recommendation of the department, may adopt and promulgate rules
18 and regulations to carry out the Cathode Ray Tube Device Recycling
19 Act as provided in section 81-1505.

20 Sec. 13. Except as provided in section 14 of this act,
21 the following penalties may be imposed under the Cathode Ray Tube
22 Device Recycling Act:

23 (1) Against a seller of cathode ray tube devices, for
24 each sale by such seller of a new cathode ray tube device not
25 subject to registration under the act, an administrative penalty
26 imposed by the department not to exceed five hundred dollars per
27 sale or a civil penalty imposed by a court of competent
28 jurisdiction not to exceed one thousand dollars per sale, but no

1 penalty shall be imposed under this subdivision against any person
2 who sells or offers for sale a new cathode ray tube device not
3 registered under the act if the person reviewed the department's
4 web site as required by section 4 of this act in the year in which
5 the sale occurred and determined that, as of the date of his or her
6 review, the new cathode ray tube device was required to be but was
7 not registered and that information was included in the
8 certification submitted to the department by the seller;

9 (2) Against a seller of cathode ray tube devices who has
10 not filed a certification required by section 4 of this act, an
11 administrative penalty imposed by the department not to exceed five
12 hundred dollars per sale or a civil penalty imposed by a court of
13 competent jurisdiction not to exceed one thousand dollars per sale;
14 and

15 (3) Against a registrant for failure to provide the
16 recycling, refurbishment, or reuse program described in the
17 registrant's registration, an administrative penalty imposed by the
18 department not to exceed five hundred dollars or a civil penalty
19 imposed by a court of competent jurisdiction not to exceed one
20 thousand dollars.

21 Penalties collected under this section shall be remitted
22 to the State Treasurer for distribution in accordance with Article
23 VII, section 5, of the Constitution of Nebraska.

24 Sec. 14. The Cathode Ray Tube Device Recycling Act does
25 not prohibit or restrict any other legally available recycling,
26 refurbishment, or reuse programs for cathode ray tube devices not
27 required to be registered under the act from receiving, storing,
28 transporting, recycling, refurbishing, or reusing cathode ray tube

1 devices.

2 Sec. 15. The Cathode Ray Tube Device Recycling Act shall
3 become inoperative upon the occurrence of either of the following:

4 (1) One or a combination of federal laws establish a
5 program for the collection, recycling, refurbishment, or reuse of
6 cathode ray tube devices applicable to all cathode ray tube devices
7 sold in and discarded by households in the United States; or

8 (2) A court issues a final nonappealable order that
9 out-of-state manufacturers may not be required to provide a
10 recycling, refurbishment, or reuse program required under the
11 Cathode Ray Tube Device Recycling Act.

12 Sec. 16. Section 81-1505, Revised Statutes Supplement,
13 2004, is amended to read:

14 81-1505. (1) In order to carry out the purposes of the
15 Cathode Ray Tube Device Recycling Act, the Environmental Protection
16 Act, the Integrated Solid Waste Management Act, and the Livestock
17 Waste Management Act, the council shall adopt and promulgate rules
18 and regulations which shall set standards of air, water, and land
19 quality to be applicable to the air, waters, and land of this state
20 or portions thereof. Such standards of quality shall be such as to
21 protect the public health and welfare. The council shall classify
22 air, water, and land contaminant sources according to levels and
23 types of discharges, emissions, and other characteristics which
24 relate to air, water, and land pollution and may require reporting
25 for any such class or classes. Such classifications and standards
26 made pursuant to this section may be made for application to the
27 state as a whole or to any designated area of the state and shall
28 be made with special reference to effects on health, economic and

1 social factors, and physical effects on property. Such standards
2 and classifications may be amended as determined necessary by the
3 council.

4 (2) In adopting the classifications of waters and water
5 quality standards, the primary purpose for such classifications and
6 standards shall be to protect the public health and welfare and the
7 council shall give consideration to:

8 (a) The size, depth, surface area, or underground area
9 covered, the volume, direction, and rate of flow, stream gradient,
10 and temperature of the water;

11 (b) The character of the area affected by such
12 classification or standards, its peculiar suitability for
13 particular purposes, conserving the value of the area, and
14 encouraging the most appropriate use of lands within such area for
15 domestic, agricultural, industrial, recreational, and aquatic life
16 purposes;

17 (c) The uses which have been made, are being made, or are
18 likely to be made, of such waters for agricultural, transportation,
19 domestic, and industrial consumption, for fishing and aquatic
20 culture, for the disposal of sewage, industrial waste, and other
21 wastes, or other uses within this state and, at the discretion of
22 the council, any such uses in another state on interstate waters
23 flowing through or originating in this state;

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

27 (e) Procedures pursuant to section 401 of the Clean Water
28 Act, 33 U.S.C. 1251 et seq., for certification by the department of

1 activities requiring a federal license or permit which may result
2 in a discharge.

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

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

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

24 (6) In adopting pretreatment standards, the council shall
25 give consideration to the prohibitions or limitations to
26 noncompatible pollutants, prohibitions against the passage through
27 a publicly owned treatment works of pollutants which would cause
28 interference with or obstruction to the operation of publicly owned

1 treatment works, damage to such works, and the prevention of the
2 discharge of pollutants therefrom which are inadequately treated.

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

7 (8) In adopting regulations pertaining to the disposal of
8 domestic and industrial liquid wastes, the council shall give
9 consideration to the minimum amount of biochemical oxygen demand,
10 suspended solids, or equivalent in the case of industrial
11 wastewaters, which must be removed from the wastewaters and the
12 degree of disinfection necessary to meet water quality standards
13 with respect to construction, installation, change of, alterations
14 in, or additions to any wastewater treatment works or disposal
15 systems, including issuance of permits and proper abandonment, and
16 requirements necessary for proper operation and maintenance
17 thereof.

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

26 (i) Area conditions such as suitability of location,
27 geologic formations, topography, industry, agriculture, population
28 density, wildlife, fish and other aquatic life, sites of

1 archeological and historical importance, mineral, land, and water
2 resources, and the existing economic activities of the area
3 including, but not limited to, agriculture, recreation, tourism,
4 and industry;

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

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

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

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

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

26 (c) With respect to mineral production wells, the council
27 shall adopt and promulgate rules and regulations which require
28 restoration of air, land, water, and subsurface resources and

1 require mineral production well permit applications to include a
2 restoration plan for the air, land, water, and subsurface resources
3 affected. Such rules and regulations may provide for issuance of a
4 research and development permit which authorizes construction and
5 operation of a pilot plant by the permittee for the purpose of
6 demonstrating the permittee's ability to inject and restore in a
7 manner which meets the standards required by this subsection and
8 the rules and regulations.

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

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

24 (10) In adopting livestock waste control regulations, the
25 council shall consider the discharge of livestock wastes into the
26 waters of the state or onto land not owned by the livestock
27 operator, conditions under which permits for such operations may be
28 issued, including design, location, and proper management of such

1 facilities, protection of ground water from such operations, and
2 revocation, modification, or suspension of such permits for cause
3 and all requirements of the Livestock Waste Management Act.

4 (11) In adopting regulations for the issuance of permits
5 under the National Pollutant Discharge Elimination System created
6 by the Clean Water Act, 33 U.S.C. 1251 et seq., the council shall
7 consider when such permits shall be required and exemptions,
8 application and filing requirements, terms and conditions affecting
9 such permits, notice and public participation, duration and review
10 of such permits, and monitoring, recording, and reporting under the
11 system.

12 (12) The council shall adopt and promulgate rules and
13 regulations for air pollution control which shall include:

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

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

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

25 (d) Provisions for applications to be on forms provided
26 by the department and to contain information necessary to make a
27 determination on the appropriateness of issuance or denial. The
28 department shall make a completeness determination in a timely

1 fashion and after such determination shall act on the application
2 within time limits set by the council. Applications for operating
3 permits shall include provisions for certification of compliance by
4 the applicant;

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

23 (f) Classification of air quality control regions;

24 (g) Standards for air quality that may be established
25 based upon protection of public health and welfare, emission
26 limitations established by the United States Environmental
27 Protection Agency, and maximum achievable control technology
28 standards for sources of toxic air pollutants. For purposes of

1 this subdivision, maximum achievable control technology standards
2 shall mean an emission limit or control technology standard which
3 requires the maximum degree of emission reduction that the council,
4 taking into consideration the cost of achieving such emission
5 reduction, any health and environmental impacts not related to air
6 quality, and energy requirements, determines is achievable for new
7 or existing sources in the category or subcategory to which the
8 standard applies through application of measures, processes,
9 methods, systems, or techniques, including, but not limited to,
10 measures which accomplish one or a combination of the following:

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

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

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

19 (h) Restrictions on open burning and fugitive emissions;

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

23 (j) Provisions for implementation of the sulfur dioxide
24 allowance system of the Clean Air Act, 42 U.S.C. 7401 et seq.,
25 through the operating permit program;

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

28 (l) Provisions for periodic reporting of emissions;

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

5 (n) Time schedules for compliance;

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

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

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

12 (13) (a) In adopting regulations for hazardous waste
13 management, the council shall give consideration to generation of
14 hazardous wastes, labeling practices, containers used, treatment,
15 storage, collection, transportation including a manifest system,
16 processing, resource recovery, and disposal of hazardous wastes.
17 It shall consider the permitting, licensing, design and
18 construction, and development and operational plans for hazardous
19 waste treatment, storage, and disposal facilities, and conditions
20 for licensing or permitting of hazardous waste treatment, storage,
21 and disposal areas. It shall consider modification, suspension, or
22 revocation of such licenses and permits, including requirements for
23 waste analysis, site improvements, fire prevention, safety,
24 security, restricted access, and covering and handling of hazardous
25 liquids and materials. Licenses and permits for hazardous waste,
26 treatment, storage, and disposal facilities shall not be issued
27 until certification by the State Fire Marshal as to fire prevention
28 and fire safety has been received by the department. The council

1 shall further consider the need at treatment, storage, or disposal
2 facilities for required equipment, communications and alarms,
3 personnel training, and contingency plans for any emergencies that
4 might arise and for a coordinator during such emergencies.

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

12 In considering closure and postclosure of hazardous waste
13 treatment, storage, or disposal facilities, the council shall
14 consider regulations that would result in the owner or operator
15 closing his or her facility so as to minimize the need for future
16 maintenance, and to control, minimize, or eliminate, to the extent
17 necessary to protect humans, animals, and the environment,
18 postclosure escape of hazardous waste, hazardous waste
19 constituents, and leachate to the ground water or surface waters,
20 and to control, minimize, or eliminate, to the extent necessary to
21 protect humans, animals, and the environment, waste decomposition
22 to the atmosphere. In considering corrective action for hazardous
23 waste treatment, storage, or disposal facilities, the council shall
24 consider regulations that would require the owner or operator, or
25 any previous owner or operator with actual knowledge of the
26 presence of hazardous waste at the facility, to undertake
27 corrective action or such other response measures necessary to
28 protect human health or the environment for all releases of

1 hazardous waste or hazardous constituents from any treatment,
2 storage, or disposal facility or any solid waste management unit at
3 such facility regardless of the time at which waste was placed in
4 such unit.

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

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

23 (c) In adopting regulations for hazardous waste
24 management, the council shall establish a schedule of fees to be
25 paid to the director by licensees or permittees operating hazardous
26 waste processing facilities or disposal areas on the basis of a
27 monetary value per cubic foot or per pound of the hazardous wastes,
28 sufficient but not exceeding the amount necessary to reimburse the

1 department for the costs of monitoring such facilities or areas
2 during and after operation of such facilities or areas. The
3 licensees may assess a cost against persons using the facilities or
4 areas. The director shall remit any money collected from fees paid
5 to him or her to the State Treasurer who shall credit the entire
6 amount thereof to the General Fund.

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

22 (14) In adopting regulations governing discharges or
23 emissions of oil and other hazardous materials into the waters, in
24 the air, or upon the land of the state, the council shall consider
25 the requirements of the Integrated Solid Waste Management Act,
26 methods for prevention of such discharges or emissions, and the
27 responsibility of the discharger or emitter for cleanup, toxicity,
28 degradability, and dispersal characteristics of the substance.

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

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

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

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

11 (d) A term of five years for such permits, which shall
12 not be transferable;

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

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

19 (g) Inspections of such compost sites at least
20 semiannually followed by ratings, with a copy of such ratings to be
21 given to the site management. Operations out of compliance with
22 composting regulations, permit conditions, or operational plans
23 shall be given a reasonable time for voluntary compliance, and
24 failure to do so within the specified time shall result in a
25 hearing after notice is given, at which time the owner or operator
26 shall appear and show cause why his or her permit should not be
27 revoked;

28 (h) Special permits of the department for demonstration

1 projects not to exceed six months;

2 (i) Exemptions from permits of the department; and

3 (j) The Integrated Solid Waste Management Act.

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

14 (17) Prior to adopting, amending, or repealing standards
15 and classifications of air, water, and land quality and rules and
16 regulations under the Integrated Solid Waste Management Act or the
17 Livestock Waste Management Act, the council shall, after due
18 notice, conduct public hearings thereon. Notice of public hearings
19 shall specify the waters or the area of the state for which
20 standards of air, water, or land are sought to be adopted, amended,
21 or repealed and the time, date, and place of such hearing. Such
22 hearing shall be held in the general area to be affected by such
23 standards. Such notice shall be given in accordance with the
24 Administrative Procedure Act.

25 (18) Standards of quality of the air, water, or land of
26 the state and rules and regulations adopted under the Integrated
27 Solid Waste Management Act or the Livestock Waste Management Act or
28 any amendment or repeal of such standards or rules and regulations

1 shall become effective upon adoption by the council and filing in
2 the office of the Secretary of State. In adopting standards of
3 air, water, and land quality or making any amendment thereof, the
4 council shall specify a reasonable time for persons discharging
5 wastes into the air, water, or land of the state to comply with
6 such standards and upon the expiration of any such period of time
7 may revoke or modify any permit previously issued which authorizes
8 the discharge of wastes into the air, water, or land of this state
9 which results in reducing the quality of such air, water, or land
10 below the standards established therefor by the council.

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

16 (20) In addition to such standards as are heretofore
17 authorized, the council shall adopt and promulgate rules and
18 regulations to set standards of performance, effluent standards,
19 pretreatment standards, treatment standards, toxic pollutant
20 standards and limitations, effluent limitations, effluent
21 prohibitions, and quantitative limitations or concentrations which
22 shall in all respects conform with and meet the requirements of the
23 National Pollutant Discharge Elimination System in the Clean Water
24 Act, 33 U.S.C. 1251 et seq.

25 (21) (a) The council shall adopt and promulgate rules and
26 regulations requiring all new or renewal permit or license
27 applicants regulated under the Environmental Protection Act, the
28 Integrated Solid Waste Management Act, or the Livestock Waste

1 Management Act to establish proof of financial responsibility by
2 providing funds in the event of abandonment, default, or other
3 inability of the permittee or licensee to meet the requirements of
4 its permit or license or other conditions imposed by the department
5 pursuant to the acts. The council may exempt classes of permittees
6 or licensees from the requirements of this subdivision when a
7 finding is made that such exemption will not result in a
8 significant risk to the public health and welfare.

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

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

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

21 (iii) An established escrow account; or

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

27 (c) The director shall determine the amount of the bond,
28 deposit, or escrow account which shall be reasonable and sufficient

1 so the department may, if the permittee or licensee is unable or
2 unwilling to do so and in the event of forfeiture of the bond or
3 other financial responsibility methods, arrange to rectify any
4 improper management technique committed during the term of the
5 permit or license and assure the performance of duties and
6 responsibilities required by the permit or license pursuant to law,
7 rules, and regulations.

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

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

17 (22) The council shall adopt and promulgate rules and
18 regulations no more stringent than the provisions of section 1453
19 et seq. of the federal Safe Drinking Water Act for public water
20 system source water assessment programs.

21 The council may adopt and promulgate rules and
22 regulations to implement a source water petition program no more
23 stringent than section 1454 et seq. of the federal Safe Drinking
24 Water Act.

25 (23) The council may adopt and promulgate rules and
26 regulations to carry out the Cathode Ray Tube Device Recycling Act.
27 Rules and regulations regarding the recycling, refurbishment, and
28 reuse of cathode ray tube devices shall not be more restrictive

1 than regulations of the United States Environmental Protection
2 Agency regarding the recycling, refurbishment, and reuse of cathode
3 ray tube devices. Regulations adopted by the United States
4 Environmental Protection Agency under the federal Resource
5 Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq.,
6 as the act existed on January 1, 2005, regarding the recycling,
7 refurbishment, and reuse of cathode ray tube devices shall
8 supersede any rules and regulations previously adopted by the
9 council regarding the recycling, refurbishment, and reuse of
10 cathode ray tube devices.

11 Sec. 17. Section 81-1505.01, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 81-1505.01. There is hereby created the Department of
14 Environmental Quality Cash Fund which shall be used to pay the
15 expenses of the department. The department shall remit all fees
16 collected pursuant to subsection (9) of section 81-1505 and section
17 81-1521.09 to the State Treasurer for credit to the fund. Any fee
18 collected pursuant to section 81-1521.09 shall be used to pay the
19 expenses related to the notice of intent for which the fee was
20 paid. Any fee collected under the Cathode Ray Tube Device
21 Recycling Act shall be used to pay the costs of implementing such
22 act. Any money in the fund available for investment shall be
23 invested by the state investment officer pursuant to the Nebraska
24 Capital Expansion Act and the Nebraska State Funds Investment Act.

25 Sec. 18. Original section 81-1505.01, Reissue Revised
26 Statutes of Nebraska, and section 81-1505, Revised Statutes
27 Supplement, 2004, are repealed.