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Environmental Protection

Environmental Protection; management of hazardous waste

N.R.S. §§444.—444.— (new); §§444.490, 459.045 (amended).
AB 196 (Schofield); STATS 1981, Ch 457
(Effective June 2, 1981)

In an attempt to protect human health, public safety, and the environment from the effects of improper, inadequate, or unsound management¹ of hazardous waste,² the Legislature has enacted Chapter 457 which allows for the promulgation and enforcement of regulations³ and penalties for any violation of regulations.⁴ These regulations are to be adopted by the State Environmental Commission⁵ (hereinafter referred to as the Commission) and must (1) govern the generation, transportation, packing, manifesting,⁶ labeling, storage,⁷ treatment,⁸ and disposal⁹ of hazardous waste;¹⁰ (2) prescribe mechanisms for determining whether any waste is hazardous;¹¹ (3) govern combinations of wastes that are not compatible;¹² and (4) provide standards for treatment facilities of hazardous waste.¹³ Chapter 457 also allows the Commission to adopt regulations pertaining to the granting, renewal, modification, suspension, revocation, and denial of permits to treat, store, or dispose of hazardous waste.¹⁴ In addition, Chapter 457 requires the State De-

1. See N.R.S. §444.— (definition of management of hazardous waste).

2. See *id.* §444.— (definition of hazardous waste). See also *id.* §444.— (dust from cement kilns, drilling fluids and other wastes; solid waste from the extraction, beneficiation and processing of ores and minerals; fly ash; bottom ash; slag and waste removed from flue gas are regulated by this act only if they are also regulated pursuant to the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901-6987).

3. See *id.* §§444.—, 444.— (standards for regulations adopted by the Commission must be based upon studies, guidelines, and regulations of the Federal Government).

4. See *id.* §444.— 3.

5. See *id.* §444.— (definition of Commission).

6. See *id.* §444.— (definition of manifest).

7. See *id.* §444.— (definition of storage).

8. See *id.* §444.— (definition of treatment).

9. See *id.* §444.— (definition of disposal).

10. See *id.* §§444.— 3, 4, 6, 7.

11. *Id.* §444.— 1.

12. *Id.* §444.— 2.

13. *Id.* §§444.— 4, 5.

14. See *id.* §444.— 1. See also *id.* §444.— (Department may promulgate terms and conditions when they conform to provisions adopted by the Commission; permits must not exceed a five-year period; and the Department may suspend or revoke a permit pursuant to the Commission's regulations).

partment of Conservation and Natural Resources¹⁵ (hereinafter referred to as the Department) to enforce the Commission's regulations on hazardous waste.¹⁶

Under the provisions of Chapter 457, it is unlawful for any person¹⁷ to treat, store, dispose of hazardous waste, or construct, substantially alter, or operate any treatment facility without a permit.¹⁸ The Commission must adopt regulations that require any applicant to show sufficient financial responsibility for any undertaking to construct, substantially alter, or operate a treatment facility for hazardous waste.¹⁹ Upon licensure, the licensee must keep specified records and submit reports to the Commission.²⁰ With limited exceptions,²¹ these reports and all other information obtained by the Department in the performance of its duties relating to hazardous waste are public information.²²

In addition, under Chapter 457 the Commission may adopt regulations that regulate the safety of vehicles and drivers, and may provide licensing requirements and regulations for generators and transporters who transport hazardous waste or cause it to be transported into or through Nevada.²³ The regulations may provide that the applicant be charged a fee to pay for the cost of inspection and regulations.²⁴ For a violation of these regulations, administrative penalties may be levied of not more than \$2,500 per violation or \$10,000 per shipment.²⁵ Chapter 457 additionally permits criminal prosecution of violators who are not licensed by the Department.²⁶ Furthermore, Chapter 457 allows the Director of the Department of Human Resources to set apart land to be

15. *See id.* §444.— (definition of Department).

16. *Id.* §444.— 1.

17. *See id.* §444.— (definition of person).

18. *Id.* §444.— 1. *See also id.* §§444.— 2(a), 2(b) (any person who is conducting an activity on the effective date of these regulations which necessitates a permit, shall be deemed to have been granted a permit until one is issued, unless the delay was caused by the applicant's failure to furnish the necessary information).

19. *Id.* §444.— (evidence of liability insurance, security for any abandonment, cessation, or interruption of service, and any other evidence of financial responsibility).

20. *See id.* §§444.— 1, 2 (pertaining to the (1) installation, calibration, use, and maintenance of monitoring equipment; (2) samples, tests, and analyses; (3) records; (4) reports to the department; and (5) making it unlawful to generate, store, transport, treat, or dispose of hazardous waste without reporting each activity to the Department).

21. *See id.* §444.— 2 (trade secrets, processes, operations, style of work or apparatus of any person, or confidential statistical information such as profits are excluded from public information).

22. *See id.* §444.— 1. *See also id.* §444.— (Commission may adopt a procedure allowing the applicant or holder of a permit to propose a substitution which is equivalent to the standards formulated).

23. *Id.* §444.— 1.

24. *Id.* §444.— 2(a).

25. *Id.* §444.— 2(b).

26. *Id.*

used by the Director of the State Department of Conservation and Natural Resources for the disposal of chemical and other hazardous waste.²⁷ The Director of the State Department of Conservation and Natural Resources also may enter into agreements concerning state-owned land for the purpose of providing areas for disposal of chemical and other hazardous waste.²⁸

Moreover, Chapter 457 specifies that designated employees of the Department, inspectors, and peace officers of the Motor Carrier Division of the Department of Motor Vehicles, the Public Service Commission of Nevada, and the Nevada Highway Patrol are responsible for the enforcement of the Commission's regulations pertaining to the transport, handling, and disposal of hazardous waste.²⁹ In addition, Chapter 457 provides that any authorized representative or employee of the Commission or Department may enter any place where the Department has reason to believe waste is being generated, stored, transported, treated, or disposed of.³⁰ The representative may inspect and obtain samples of suspected hazardous waste as well as copy any relevant information pertaining to the management of hazardous waste.³¹

Chapter 457 also provides procedures that must be followed when the public is endangered by the mishandling of hazardous waste.³² When the Department receives information pertaining to the mishandling of hazardous waste which may result in an imminent and substantial hazard, it may (1) issue an order directing the owner or operator of the facility or person who has custody of the waste to take necessary preventive measures,³³ (2) request the Attorney General to commence an action to enjoin the practices or acts which constitute the hazard,³⁴ and (3) take any other action that will reduce or eliminate the hazard.³⁵ Moreover, Chapter 457 requires that any person engaging in or who has engaged in a violation of any regulation may receive an order from the Director³⁶ specifying the circumstances and provisions that were violated, prescribing any corrections that must be undertaken,³⁷ and the time within which they must be completed.³⁸ The violator may also be requested to appear before the Director or a hear-

27. *See id.* §444.—.

28. *See id.* §444.—.

29. *Id.* §444.— 3.

30. *See id.* §444.— 1.

31. *See id.* §§444.— 2, 3 (including any record, report, or test result).

32. *See generally id.* §444.—.

33. *See id.* §444.— 1.

34. *Id.* §444.— 2.

35. *Id.* §444.— 3.

36. *See id.* §444.— (definition of Director).

37. *See id.* §444.— 3.

ing officer to show cause why the Department should not commence an action against the person in district court to prevent the occurrence or continuance of any violations.³⁹ In addition, Chapter 457 allows the Director to seek an injunction in district court to prevent the occurrence or continuance of any violations.⁴⁰ When warranted by the circumstances of the violation, the court may issue without bond a prohibitory or mandatory injunction, including a temporary, preliminary, or permanent restraining order.⁴¹ The court may also require a performance bond or security by the respondent to ensure compliance.⁴²

Penalties are provided for violations of the provisions of Chapter 457, regulations adopted by the Commission, or orders issued by the Department.⁴³ In addition to any other penalties provided for in Chapter 457, a violator may be liable for a civil penalty of not more than \$10,000 for each day he or she is in violation.⁴⁴ The Department is further authorized to recover any actual damages which are the result of a violation including damages incurred by the Department in removing, correcting, or terminating any adverse effects which resulted from the violation *and* compensation for any fish, aquatic life, or other wildlife destroyed as a result of the violation.⁴⁵ The violator may also face criminal punishment in the county jail for not more than one year, a fine of not more than \$10,000, or both fine and imprisonment.⁴⁶ Furthermore, any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method, or knowingly makes any false statement, representation, or certification on any application, record, report, plan, or other document filed or required to be maintained by Chapter 457 may be imprisoned in a county jail for not more than one year, fined not more than \$10,000, or both.⁴⁷ Chapter 457 specifically requires that the first intentional violation of any term or condition of a permit or a first violation constituting criminal negligence be

38. *See id.* §444.— (Department may include a condition in the permit specifying the time that will be allowed to complete the modifications).

39. *Id.* §444.— 4.

40. *Id.* §444.— 1. *See also id.* §444.— (Commission, Department, and the Attorney General may subpoena the attendance and testimony of witnesses, and the production of any other evidence which they deem necessary).

41. *See id.* §444.— 2. *See also id.* §444.— 2 (temporary restraining order may be granted only when the Director has attempted to notify the defendant first).

42. *Id.* §444.— 4. *See also id.* §444.— 3 (Director does not have to show an adequate remedy at law, or that irreparable harm will result from the act to obtain a temporary restraining order or injunction).

43. *See generally id.* §444.— 1.

44. *Id.* §444.— 1.

45. *Id.* §444.— 2.

46. *See id.*

47. *Id.* §444.—.

punished by imprisonment in a county jail for not more than one year, or by a fine of not more than \$25,000, or both.⁴⁸ For any second or subsequent violation, the person will be subject to imprisonment in the state prison for not less than one year or more than six years, a fine of not more than \$50,000, or both fine and imprisonment.⁴⁹

In conclusion, Chapter 457 attempts to ensure the safe and adequate management of hazardous waste by allowing the Commission to adopt regulations for the storage, generation, transportation, treatment, and disposal of hazardous waste.⁵⁰ Moreover, Chapter 457 provides for the enforcement of the regulations established pursuant to this Chapter.⁵¹

48. *Id.* §444.— 1.

49. *Id.* §444.— 2.

50. *See id.* §444.—.

51. *See id.*

Environmental Protection; regulation of the transportation and disposal of radioactive waste

N.R.S. §§459.—459.—, 706.— (new); §§356.087, 408.125, 459.030, 459.040, 459.045, 484.773, 484.779, STATUTES OF NEVADA 1977, c. 43, §4, at 112 (amended).

SB 86 (Jacobsen); STATS 1981, Ch 116
(*Effective April 20, 1981*)

Chapter 116 was enacted to (1) regulate brokers,¹ shippers, and carriers² who handle, transport, or dispose of radioactive waste,³ (2) clarify the powers of the State Board of Health, the Health Division of the Department of Human Resources (hereinafter referred to as the Division) and the Public Service Commission (hereinafter referred to as the P.S.C.),⁴ and (3) provide penalties and the power to enforce the provisions of Chapter 116.⁵

Regulation of Brokers and Shippers

Under existing law, a broker may not engage in business in Nevada unless the broker conforms to the provisions of the laws and regula-

1. N.R.S. §706.021 (definition of broker).

2. *Id.* §§706.036 (definition of common carrier), 706.051 (definition of contract carrier), 706.111 (definition of private carrier).

3. *See id.* §§459.— 1-3, 706.— 3, 4.

4. *See id.* §§459.— 2, 5 (powers of the Division), 459.040, 459.045 (powers of the State Board of Health), 706.— 1, 2, 6 (powers of the P.S.C.).

5. *See id.* §§459.— 3, 4, 459.— 1, 2, 459.—, 459.045 3 (penalties), 459.— 1, 2 (enforcement).