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Environmental Protection; Regulation of the Transportation and Disposal of Radioactive Waste

Univeristy of the Pacific, McGeorge School of Law

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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).

tions governing motor vehicle carriers.⁶ In addition, a broker must obtain a certificate of public convenience and necessity from the P.S.C. in order to use any highway in Nevada.⁷ With the enactment of Chapter 116, brokers and shippers who handle and transport radioactive waste must obtain a license for the use of disposal areas⁸ from the Division.⁹ This license may be issued only if the shipper or broker demonstrates to the satisfaction of the Division that the shipper or broker will conform to the regulations¹⁰ of the State Board of Health that regulate the transportation and handling of radioactive waste.¹¹ Furthermore, an unlicensed shipper or broker is prohibited from disposing of radioactive waste in Nevada, and the Division may order a shipment of radioactive waste received from an unlicensed shipper or broker to be returned to the shipper or broker.¹²

Chapter 116 allows the Division to suspend or revoke a license when a shipper or broker violates any provision relating to the disposal of radioactive waste.¹³ Each container of waste that is not accompanied with the proper documents,¹⁴ leaks its contents,¹⁵ or is improperly packaged¹⁶ constitutes a separate violation of Chapter 116.¹⁷ For each violation, a licensed shipper or broker may be assessed a penalty not to exceed \$2,500.¹⁸ A shipper or broker who is unlicensed is guilty of a misdemeanor for each violation.¹⁹ The total penalty for any one shipment, however, cannot exceed \$10,000.²⁰ In addition, a broker or shipper who fails to comply with any agreement, license, regulation, or statute governing the operation of a disposal area may be fined in an amount not to exceed \$3,000 per day for each failure to comply.²¹ When assessing the extent of a penalty, the substantiality of the viola-

6. *Id.* §706.226.

7. *Id.* §706.386.

8. *See id.* §444.460 (definition of disposal site).

9. *See id.* §459.— 1.

10. *See id.* §§459.040, 459.045.

11. *Id.* §459.— 2.

12. *Id.* §459.— 1.

13. *Id.* §459.— 5 (a license may be reinstated only if the shipper or broker demonstrates to the Division the ability to comply with the provisions of Chapter 116 in all future shipments of waste).

14. *Id.* §459.— 3(b) (the documents include a bill of lading or any other shipping documents prescribed by the State Board of Health).

15. *Id.* §459.— 3(c) (providing an affirmative defense for the shipper or broker who proves that the carrier of the waste was responsible for the leak or spill).

16. *Id.* §459.— 3(a) (each container must be packaged and labeled in conformity with the regulations of the State Board of Health).

17. *See id.* §459.— 4.

18. *Id.* §459.— 3.

19. *Id.* *See also id.* §193.150 (a misdemeanor is punishable by imprisonment in the county jail for not more than six months or by a fine not to exceed \$500 or by both).

20. *Id.* §459.— 4.

21. *Id.* §459.045 3.

tion and the injury or risk of injury to persons²² or property is to be taken into consideration.²³

Regulation of Carriers

Existing law provides that a carrier must not operate on any highway in Nevada unless the carrier conforms to the laws and regulations governing motor vehicle carriers.²⁴ In addition, existing law requires that all carriers must be licensed by the Department of Motor Vehicles²⁵ and that all contract carriers must obtain a permit before engaging in business in Nevada.²⁶ Chapter 116 also requires all carriers to obtain permits from the P.S.C. before they will be allowed to transport radioactive waste in Nevada.²⁷ A carrier who has not received a permit from the P.S.C. may only transport radioactive waste in Nevada if the carrier is exempt from licensing by the Division.²⁸ The P.S.C. will not issue a permit unless the carrier either registers his or her certificate issued by the Interstate Commerce Commission and complies with the regulations of the P.S.C., or demonstrates the ability, to the satisfaction of the P.S.C., to comply with all laws and regulations of Nevada respecting the transportation of radioactive waste.²⁹

Chapter 116 requires that a carrier notify the P.S.C. that the carrier is going to bring radioactive waste into Nevada between four and forty-eight hours before beginning to transport the waste into Nevada.³⁰ Moreover, a carrier must reject any package containing radioactive waste that is spilling its contents, is improperly packaged, or is not accompanied with the proper shipping documents.³¹ A carrier that accepts a package in any of these conditions is liable for any damages that result while the package is in his or her custody unless the carrier can prove that he or she did not and could not know of the leak when the package was accepted.³² Chapter 116 allows the P.S.C. to revoke the permit that allowed the carrier to transport radioactive waste in Nevada when the P.S.C. discovers that the carrier has failed to comply with any state or Federal law³³ or regulation governing the transporta-

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22. *Id.* §459.010 5 (definition of person).
 23. *Id.* §459.— 4.
 24. *See id.* §706.226.
 25. *See id.* §§706.186, 706.491.
 26. *See id.* §706.421.
 27. *See id.* §706.— 1.
 28. *See id.* §706.— 5.
 29. *See id.* §706.— 2.
 30. *See id.* §706.— 4.
 31. *Id.* §706.— 3.
 32. *See id.*
 33. *See generally* 10 C.F.R. §§71.1-71.64 (1980).

tion of radioactive waste.³⁴

Additional Penalties and Enforcement

Chapter 116 imposes a fine of not more than \$10,000, or imprisonment for not more than one year, or both, for any person employed at a disposal area for radioactive waste who removes, without prior written authorization, any waste, machinery, or equipment from the area.³⁵ If this person is employed by the operator of the disposal area, the operator may be assessed an administrative penalty of not more than \$10,000 in addition to any other penalty provided by law.³⁶ Chapter 116 provides that all penalties assessed must be deposited in the trust fund for the care of sites for the disposal of radioactive waste.³⁷ Finally, Chapter 116 allows peace officers and inspectors of the Motor Carrier Division of the Department of Motor Vehicles,³⁸ the P.S.C.,³⁹ and the Nevada Highway Patrol⁴⁰ to enforce provisions relating to the safety of drivers and vehicles that transport radioactive waste.⁴¹ An inspector or peace officer may impound vehicles that contain unsafe equipment,⁴² detain vehicles that leak radioactive material,⁴³ order the cleanup of spilled material,⁴⁴ or prescribe any other appropriate precaution or remedy.⁴⁵

34. See N.R.S. §706.— 6.

35. See *id.* §459.— 1.

36. *Id.* §459.— 2.

37. *Id.* §459.—

38. *Id.* §§169.125 5 (definition of a peace officer of the Department of Motor Vehicles), 481.049 (employment of inspectors).

39. *Id.* §169.125 6 (definition of a peace officer of the P.S.C.).

40. *Id.* §§169.125 4 (definition of a peace officer of the Nevada Highway Patrol), 481.140 (composition of Highway Patrol personnel).

41. *Id.* §459.— 1.

42. *Id.* §459.— 2(a).

43. *Id.* §459.— 2(b).

44. *Id.* §459.— 3(b).

45. *Id.* §459.— 3(d).