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Environmental Protection

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Environmental Protection

Environmental Protection; asbestos contractors—certification and advertising

Business and Professions Code § 7118.5 (repealed); §§ 7030.6, 7058.6, 7058.8, 7118.5 (new); § 7118.5 (amended).

AB 2999 (Speier); 1988 STAT. Ch. 1003

Support: California Labor Federation; California Teamsters Public Affairs Council; Construction Industry Legislative Council

Under existing law, a contractor engaging in asbestos-related work¹ must be certified by the Contractors' State License Board (CSLB).² These contractors also must register with the Division of Occupational Safety and Health of the Department of Industrial Relations (Cal-OSHA).³ Chapter 1003 requires a contractor to be registered with Cal-OSHA prior to obtaining an asbestos certification.⁴ Chapter 1003 prohibits the promotional advertising⁵ of asbestos removal services by any person who is not certified⁶ to engage in asbestos-related work.⁷ Chapter 1003 requires an advertisement for asbestos-related work to contain: (1) Valid certification numbers, (2) valid registration numbers, and (3) the name under which the person is registered and certified.⁸ An advertiser failing to include this information will be issued a citation.⁹ Chapter 1003 also provides that the recipient of a

1. Asbestos-related work means any activity which, by disturbing asbestos-containing construction materials (one tenth of one percent asbestos by weight), may release asbestos fibers into the air; however, mining of asbestos-bearing ore or installation or repair of automotive materials containing asbestos is not considered asbestos-related work. CAL. LABOR CODE § 6501.8; 8 CAL. CODE REGS. § 341.6(b).

2. CAL. BUS. & PROF. CODE § 7058.5.

3. *Id.* § 7058.7(b)(1).

4. *Id.* § 7058.6. The CSLB may issue an asbestos certification to a contractor who is not registered provided the contractor, in a written statement, acknowledges that the sole purpose for requiring certification is to bid on a project involving asbestos-related work and not to perform the actual asbestos-related work. *Id.*

5. *Id.* § 7026.7 (definition of advertisement).

6. *Id.* § 7058.5(a) (requiring asbestos certification examination). See CAL. LABOR CODE § 6501.5 (providing registration and application requirements to do asbestos-related work).

7. CAL. BUS. & PROF. CODE § 7030.6(a).

8. *Id.*

9. *Id.* § 7030.6(c) (purpose is to regulate asbestos contractors). See generally *Zauderer v. Supreme Court of Ohio*, 105 U.S. 2265 (1984). Zauderer, an attorney, advertised in a

citation may request a hearing upon notifying the registrar.¹⁰ Finally, Chapter 1003 prohibits the knowing or negligent entry into a contract for asbestos-related work with someone who is not certified.¹¹

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newspaper that he would represent women who had suffered injuries resulting from their use of the Dalkon shield and that "if there is no recovery, no legal fees are owed by our clients." *Id.* at 2270-71. Zauderer was charged with deceptive advertising because, win or lose, the client still would be liable for court costs. *Id.* at 2272. The court held that Zauderer's advertisement was deceptive and misleading and that the government has the power to restrict commercial speech if it is deceptive, false, or if the advertisement is of substantial governmental interest. *Id.* at 2282.

10. CAL. BUS. & PROF. CODE § 7030.6(d). The citation must contain an order of correction requiring: (1) The violator to cease unlawful advertising; (2) the violator to cease the use of the telephone number on the advertisement; and (3) that the number must not be referred by the telephone company to the new telephone number of the person. *Id.* § 7030.6(e). The CSLB must make available to the public the following information regarding contracting for the removal or encapsulation of asbestos containing materials: (1) Steps to take when contracting with a company to remove asbestos; (2) existing laws and regulations pertaining to asbestos-related work in California; (3) basic health information contained in the United States Environmental Protection Agency publication, "Guidance for Controlling Asbestos-Containing Materials in Buildings"; and (4) a current list of contractors who are certified and registered to perform asbestos-related work. *Id.* § 7058.8(a)-(d).

11. *Id.* § 7118.5. Conviction of a first offense is punishable by a fine not less than \$1,000 nor more than \$3,000 and by possible revocation or suspension of any contractor's license. *Id.* § 7118.5(a). Conviction of a subsequent offense is a misdemeanor requiring revocation or suspension of any contractor's license and a fine of not less than \$3,000 nor more than \$5,000, or imprisonment for not more than one year, or both. *Id.* § 7118.5(b).

Environmental Protection; environmental impact reports— findings of mitigation

Public Resources Code § 21081.6 (new).
AB 3180 (Cortese); 1988 STAT. Ch. 1232

Existing law requires a public agency¹ to reject a project² that has been determined by an environmental impact report (EIR)³ to cause

1. Agency means any state agency, board or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or political subdivision. CAL. PUB. RES. CODE § 21063.

2. *Id.* § 21065 (definition of a project).

3. *Id.* § 21061. See Environmental Impact Statement, 40 C.F.R. § 1502.1 (1987). The primary purpose of an environmental impact statement is to ensure that federal government actions comply with and implement the Environmental Quality Improvement Act of 1970. *Id.* The EIR must provide full and fair discussion of environmental impact and present alternatives that would avoid or minimize the impact. *Id.* See generally *Twain Harte Homeowners Ass'n Inc. v. Tuolumne County*, 138 Cal. App. 3d 664, 673-677, 188 Cal. Rptr. 233, 239-240 (1982)

significant environmental effects,⁴ unless there are alternatives that mitigate the impact on the environment.⁵ With the enactment of Chapter 1232, a public agency that makes a finding of significant environmental effect or a negative declaration,⁶ must adopt a reporting or monitoring system to ensure compliance with the proposed mitigation measures during the project.⁷

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(EIR's provide the public and public agencies with detailed information about the effect a proposed project is likely to have on the environment, list ways in which the significant effects of a project might be minimized, and indicate alternatives to a project).

4. CAL. PUB. RES. CODE § 21068 (significant effect means substantial or potentially substantial adverse change in the environment). *Accord* *Markely v. City Council of City of Los Angeles*, 131 Cal. App. 3d 656, 670, 182 Cal. Rptr. 659, 668 (1982) (a significant effect on the environment means a substantial, or potentially substantial, adverse change in environment with an effect on the environment of persons in general).

5. CAL. PUB. RES. CODE § 21081. Federal agencies have a continuing duty to gather and evaluate new information relevant to the environmental impact of the agencies' actions after release of an environmental impact statement. *See Oregon Natural Resources Council v. Marsh*, 832 F.2d 1489, 1494 (9th Cir. 1987). When there is new information concerning the project, the agency must consider and evaluate the information and determine if the significance warrants implementation of formal National Environmental Policy Act of 1969 filing requirements. *See id.*

6. CAL. PUB. RES. CODE § 21064 (definition of a negative declaration).

7. *Id.* § 21081.6. The reporting or monitoring program is designed to ensure compliance during project implementation. *Id.* If an agency having jurisdiction over the natural resources affected by the project requires changes in a project, that agency must prepare and submit a proposed reporting or monitoring system upon the request of the lead agency. *Id.* *Cf.* 42 U.S.C. § 4332 (1988) (Congress requires proposal to ensure that appropriate consideration is given to the environment as well as economic and technical considerations when planning and approving projects). CAL. PUB. RES. CODE § 21067 (definition of lead agency).

Environmental Protection; hazardous substances—release and notification

Health and Safety Code §§ 25360.2, 25503.6 (new); § 25359.7 (amended).

AB 924 (Tanner); 1988 STAT. Ch. 12
(Effective February 19, 1988)

SB 1496 (Torres); 1988 STAT. Ch. 1158
(Effective September 30, 1988)

Existing law provides that any lessee or renter of real property, who knows or has reasonable cause to believe that a hazardous substance¹ exists on or beneath the surface of the property, must

1. CAL. HEALTH & SAFETY CODE §§ 25316 (definition of hazardous substance), 25317 (substances excluded from definition of hazardous substance).

give written notice to the owner of that condition.² To this requirement, Chapter 1158 adds that the owner must be notified in the event of a release³ of a hazardous substance that could come into contact with the property in the future.⁴ Chapter 1158 also provides that a lessee or renter who fails to provide written notice to the owner must pay actual damages and will be liable under any other legal remedy.⁵ Under Chapter 1158, the willful failure to give a written notice by a lessee or renter who has knowledge of either the presence of a hazardous substance release in a material amount, or a hazardous substance release that is required to be reported to a state agency, results in: (1) Default of the lease or rental agreement; and (2) a civil penalty not to exceed \$5,000 for each violation.⁶ A lessee or renter, however, may cure a default upon prompt removal of the hazardous substance or other appropriate action.⁷

Chapter 12 exempts an owner⁸ occupying a single-family residence from responsibility in an action for recovery of costs or expenditures incurred from the Hazardous Substance Cleanup Fund⁹ unless the Department of Health and Safety certifies that: (1) The hazardous substance release occurred after the owner acquired the property;¹⁰ or (2) the owner knew or should have known of the release prior to obtaining the property.¹¹ Although Chapter 12 creates a presumption that the owner is not liable, the presumption may be rebutted upon proof, established by a preponderance of the evidence, that the facts

2. *Id.* § 25359.7(b). An owner of nonresidential real property must give written notice to any buyer if the owner knows or has reasonable cause to believe that a hazardous substance has come to be located on or beneath the property. *Id.* § 25359(a). *See generally Review of Selected 1987 California Legislation*, 19 PAC. L.J. 349, 602 (1988) (discussing owners' and occupiers' liabilities when funds from the Hazardous Substance Account are used to pay for removal and remedial actions in response to hazardous substance releases).

3. *See* CAL. HEALTH & SAFETY CODE §§ 25320 (actions included in the definition of release), 25321 (actions not included in the definition of release).

4. *Id.* § 25359.7(b). Chapter 1158 also adds that a owner must give notice to lessees and renters. *Id.* § 25359.7(a).

5. *Id.* § 25359.7(b)(1).

6. *Id.* § 25359.7(b)(2). This default comes upon the owner's or lessor's written notice to the lessee or renter. *Id.* § 25359.7(b)(2)(A). The default penalty will not apply if the property is used exclusively for residential purposes. *Id.*

7. *Id.* § 25359.7(b)(3). The removal or remedial action must be conducted in accordance with all applicable laws and regulations, and the action must be reasonably acceptable to, and approved in writing by, the owner or lessor. The lessee or renter, however, will remain liable for any liability for actual damages or for any civil penalty. *Id.*

8. *See id.* § 25360.2(a)(1).

9. *Id.* § 25330.

10. Property is real property of five acres or less which is zoned for, and on which has been constructed, a single-family residence. *Id.* § 25360.2(a)(2).

11. *Id.* § 25360.2(c).

in the certification are true.¹² Chapter 12 requires a business located on leased or rented property, that is required to develop an emergency plan for responding to releases of the business' hazardous materials,¹³ to give the owner notice of compliance with the plan.¹⁴

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12. *Id.* §§ 25360.2(b) (presumption of no liability); 25360.2(d) (rebutting the presumption).
 13. *Id.* § 25503.5 (regulations placed upon businesses which work with hazardous materials).
 14. *Id.* § 25503.6. The business must provide a copy of the business plan to the owner or the owner's agent within five working days after receiving a request. *Id.*

Environmental Protection; hazardous waste incineration

Health and Safety Code § 25189.7 (new).
SB 1954 (Davis); 1988 STAT. Ch. 302
Sponsor: Department of Health Services

Existing law provides that any person who burns or incinerates hazardous waste¹ at an unauthorized facility² is guilty of a misdemeanor.³ Chapter 302 provides that any person who knowingly burns or causes to be burned, or who reasonably should have known they were burning or causing the burning of hazardous waste at an unauthorized facility is guilty of a misdemeanor or felony.⁴ Further, if the burning or incineration causes a substantial probability of death or great bodily injury, the incinerator will be guilty of a felony.⁵

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1. CAL. HEALTH & SAFETY CODE § 25117 (definition of hazardous waste). See 22 CAL. CODE REGS. § 66680 (listing of hazardous chemical names and common names).
 2. CAL. HEALTH & SAFETY CODE § 25117.1 (definition of hazardous waste facility). See *id.* § 25200 (stating that permits for hazardous waste facilities are issued according to criteria set by the State Building Standards Code). See also *id.* § 42310 (listing equipment exempt from permit requirements).
 3. *Id.* § 42400 (punishable by imprisonment not exceeding six months, or by a fine not exceeding \$1,000, or both).
 4. *Id.* § 25189.7(b). Punishment for a misdemeanor conviction is imprisonment for not more than one year and fines not exceeding \$5,000 for each day in violation, but punishment for a felony is imprisonment for 16, 24, or 36 months and fines not exceeding \$100,000 for each day in violation. *Id.* § 25189.7(b),(c).
 5. *Id.* § 25189.7(c) (punishable by imprisonment for up to 36 months and fines up to \$250,000 for each day in violation).

Environmental Protection; notification of public well closures

Health & Safety Code § 4028.5 (new).

AB 2826 (Grisham); 1988 STAT. Ch. 882

Existing law requires a person¹ operating a public water system² to notify the Department of Health Services (Department) and water users³ when impurities in the water system exceed the maximum contaminant level.⁴ Under Chapter 882, a person operating a public water system also must notify⁵ the governing body of the local agency⁶ where the water users reside if a well, used as a drinking water source, has been found to contain contaminants in excess of the action level⁷ or maximum contaminant level.⁸

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1. CAL. HEALTH & SAFETY CODE § 4010.1(d) (definition of person).

2. *Id.* § 4010.1(e) (definition of public water system).

3. *Id.* § 4010(g) (definition of user).

4. *Id.* § 4028(a). *See id.* § 4101.1(c) (definition of maximum contaminant level). A person operating a public water system must notify the Department within 24 hours of discovering a significant rise in the contaminant level in the public water system. *Id.* § 4028(b). If the Department determines that the rise in the contaminant level is a threat to the health of the water users, the Department must order the person operating the public water system to notify all water users of the potential danger. *Id.* A school or school system, residential property owner, or business property owner (customer) must notify parents, students, tenants, and employees of a significant rise in the contamination level in the public water system. *Id.* § 4028(g)(1). A person operating a public water system must supply a customer a sample notification form including the source of the water system problem and suggestions for notification to public water system users. *Id.* A public water system customer must notify public water system users of a rise in the contamination level in the public water system within 10 days from the date of notification by the person operating the public water system. *Id.* § 4028(g)(2). A person operating a public water system may be assessed a civil penalty for failure to notify public water system users which could result in a fine not to exceed \$1,000 a day for each day until notice is given to the public water system users. *Id.* § 4028(g)(3).

5. Notification must be given within 30 days of the discovery of contaminants in a well or the well's closure. *Id.* § 4028.5(a). The notice to the governing body of the local agency must include: (1) The location of the well; (2) the name of the well; (3) the origin of the contaminant; (4) the maximum contaminant level or action level for the detected contaminant; and (5) the operational status of the well immediately prior to the well's closure. *Id.* § 4028.5(b).

6. *Id.* § 4028.5(c)(2) (defined as a city, county, or city and county).

7. *Id.* § 4028.5(c)(1) (defined as a safe concentration of contaminants in a drinking water supply).

8. *Id.* § 4028.5(a) (this section also applies to contaminated wells that are closed).

Environmental Protection; Southwestern Low-Level Radioactive Waste Disposal Compact

Health and Safety Code §§ 25877, 25878, 25878.1, 25878.2, 25878.3 (new).

AB 1000 (Peace); 1987 STAT. Ch. 52
(Effective June 30, 1988)*

Under existing federal law, states are allowed to enter into interstate compacts¹ to establish and operate regional low-level radioactive waste (LLW)² disposal facilities.³ Existing state law requires the Governor to enter into interstate agreements, compacts, or agreements to establish and maintain access to land disposal sites for LLW generated⁴ in California.⁵ With the enactment of Chapter 52, the legislature

* Chapter 52 was signed by the Governor June 17, 1987, and Arizona ratified the compact on June 30, 1988. See CAL. HEALTH & SAFETY CODE § 25878 art. 7(E) (West Supp. 1988) (the compact will become operative upon ratification by California and at least one other eligible state after which Congress must approve the compact).

1. 42 U.S.C.A. § 2021b(4) (West 1973 & Supp. 1988) (definition of a compact).

2. Low-level radioactive waste (LLW) is regulated radioactive material that meets the following requirements: (1) The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material under the Atomic Energy Act of 1954, ch. 1073, 68 Stat. 922 (codified as amended at 42 U.S.C.A. § 2014(e)(2) (West 1973 & Supp. 1988)); (2) the waste is not uranium mining or mill tailings which are created by mining and processing ores containing uranium; (3) the waste is not LLW which the federal government is responsible for under title 42, section 2021c(b) of the United States Code; and (4) the waste is not an alpha emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than 100 nanocuries per gram, or Curium 242 with a concentration greater than 20,000 nanocuries per gram. CAL. HEALTH & SAFETY CODE § 25878 art. 2(I) (West Supp 1988). See 10 C.F.R. § 61.55 (1988) (classifications of LLW).

3. 42 U.S.C.A. § 2021d (West Supp. 1988) (Low-Level Radioactive Waste Policy Amendments Act of 1985). Existing federal case law has interpreted the Atomic Energy Act of 1954, ch. 1073, 68 Stat. 922 (codified as amended at 42 U.S.C. §§ 2011-2296) to preempt the states in regulation of radioactive wastes. See *Northern States Power Co. v. Minnesota*, 447 F.2d 1143, 1155 (8th Cir. 1971), *aff'd*, 405 U.S. 1035 (1972). See generally Note, *Constitutional Law—Federal Preemption of State Regulatory Authority—Federal Government Has Sole Authority Under Atomic Energy Act to Regulate Radioactive Wastes Discharged from Nuclear Power Plants—Northern States Power Co. v. Minnesota*, 13 B.C. INDUS. AND COM. L. REV. 813 (1972) (Congress has always recognized the need for giving some responsibility to the states in the nuclear field). See generally 42 U.S.C.A. § 2021 (West 1973 & Supp. 1988) (providing for cooperation with the states). California became an agreement state under the Atomic Energy Act in 1962. CAL. HEALTH & SAFETY CODE §§ 25875, 25876 (West 1984). See Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240 sec. 2, 99 Stat. 1482 (1986) (codified at 42 U.S.C.A. § 2021b(1) (West Supp. 1988)) (definition of an agreement state).

4. CAL. HEALTH & SAFETY CODE § 25878 art. 2(D) (definition of generate).

5. *Id.* § 25813.5. Any agreement or compact may contain a provision for other states to have reciprocal access to permanent LLW disposal facilities in California. *Id.* Further, any agreement, compact, or agreement with a compact that either proposes membership for California in a compact under The Low-Level Radioactive Waste Policy Act, Pub. L. No. 99-240, 99 Stat. 1482 (1986) (codified at 42 U.S.C.A. §§ 2021b-2021d (West Supp. 1988)), or gives another party reciprocal access to a LLW permanent disposal facility located in California must be submitted to the Legislature for ratification. *Id.*

creates the Southwestern Low-Level Radioactive Waste Disposal Compact (Compact),⁶ and offers entry into the Compact to Arizona, South Dakota and North Dakota.⁷ This compact is created in reliance upon the Congress' declared intent to delegate the regional management⁸ of LLW to the states.⁹ The Compact is intended to provide a means for the party states¹⁰ to protect collectively their citizens and environments from the danger of radioactive wastes.¹¹ Chapter 52 announces a policy of encouraging a reduction in the volume of LLW generated in the party states, minimizing the hauling and transportation of LLW, requiring disposal¹² of LLW within the compact region,¹³ in addition to providing facilities to serve the compact region.¹⁴ Under the compact, the individual party states are responsible for the primary regulation of radioactive materials within their boundaries.¹⁵

SOUTHWESTERN LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Chapter 52 establishes the Southwestern Low-Level Radioactive Waste Commission (Commission).¹⁶ Chapter 52 requires that: (1) Each party state provide one voting member;¹⁷ (2) the host state¹⁸

6. *Id.* § 25877.

7. See 1980 U.S. CODE CONG. & ADMIN. NEWS 6936, 6938. Due to the imminent shut down of LLW disposal facilities in the U.S. in the late 1970's, efforts to dispose of the LLW were approaching the critical stage. *Id.* This threat of shut-down prompted recommendations and congressional enactment of the Low-Level Radioactive Waste Policy Act of 1980. See 1985 U.S. CODE CONG. & ADMIN. NEWS 2974 (House Report on the Low-Level Radioactive Waste Policy Amendments Act of 1985).

8. CAL. HEALTH & SAFETY CODE § 25878 art. 2(J) (West Supp. 1988) (management includes collection, consolidation, storage, packaging, or treatment of LLW).

9. *Id.* § 25878 art. 1(A).

10. *Id.* § 25878 art. 2(M) (definition of a party state).

11. See *id.* § 25878 art. 1.

12. Disposal means the permanent isolation of LLW in accordance with established requirements of the Nuclear Regulatory Commission and Environmental Protection Agency or by a party state that is acting as a host state. *Id.* § 25878 art. 2(C).

13. Compact region means the geographical area within the boundaries of the party states. *Id.* § 25878 art. 2(B).

14. *Id.* § 25878 art. 1(D).

15. *Id.* § 25878 art. 1(E).

16. *Id.* § 25878 art. 3(A).

17. *Id.* § 25878 art. 3(A)(1) (providing that a member must be appointed by the governor and confirmed by the party state's senate). Each member is entitled to one vote, and a majority of Commission members constitute a quorum. *Id.* § 25878 art. 3(F). A simple majority of votes is necessary to authorize most actions by the committee. *Id.*

18. A host state is a party state where a regional disposal facility is located or being developed. *Id.* § 25878 art. 2(G). Should there be more than one host state, only the state with an active regional disposal facility will be entitled to majority representation on the Commission. *Id.* § 25878 art. 3(A)(2).

provide enough members to maintain a simple majority on the Commission;¹⁹ (3) the Commission function as a separate legal entity, distinct from the party states, and assume separately liability for Commission activities;²⁰ and (4) the host state's laws concerning business activities and dispute resolution govern the Commission's activities.²¹

COMMISSION DUTIES AND AUTHORITY

The Commission is under a general mandate to do what is reasonably necessary to ensure the safe disposal and management of LLW.²² The Commission must levy a compact surcharge²³ on party state generators²⁴ to establish and maintain reasonable levels of funding for the activities of the Commission and its staff, a third-party liability fund,²⁵ and a local government reimbursement fund.²⁶ The

19. *Id.* § 25878 art. 3(A)(2). A county or similar political subdivision which has an existing or a planned regional disposal facility must have a member on the Commission. *Id.* § 25878 art. 3(A)(3). A host county is a county or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed. *Id.* § 25878 art. 2(F).

20. *Id.* § 25878 art. 3(B). The Commission members are not personally liable for actions in their official capacity, nor are the party states liable for the Commission's liabilities. *Id.*

21. *Id.* § 25878 art. 3(C). The Commission's records must be subject to the host state's public records law, and the meetings of the Commission must be open and public in compliance with the host state's laws. *Id.* § 25878 art. 3(D). Because Commission members are public officials of the appointing state, they are subject to the conflict of interests laws, as well as any other law, of the appointing state. *Id.* § 25878 art. 3(E).

22. *Id.* § 25878 art. 3(G)(1). An annual report of the Commission's budget showing anticipated receipts and disbursements for the subsequent fiscal year must be submitted to the party state's governors and presiding officers of the legislators. *Id.* § 25878 art. 3(G)(7),(9). The Commission is required to keep a current inventory of all regional generators and regional disposal facilities. *Id.* § 25878 art. 3(G)(11),(12). Information about LLW needs, technologies, and problems must be available to the party states and the public by the Commission. *Id.* § 25878 art. 3(G)(10). The Commission, in cooperation with the host state, must prepare contingency plans for LLW disposal and management in case a regional disposal facility is closed. *Id.* § 25878 art. 3(G)(15). A replacement plan must be prepared 10 years before a regional disposal is closed. *Id.* § 25878 art. 3(G)(22).

23. The calculation of the surcharge must be based upon both the volume (measured in cubic feet) and the level of radioactivity emitted by LLW. *Id.* § 25878 art. 3(G)(3). The surcharges imposed by the Commission must be transmitted on a monthly basis to the host state for distribution to the proper accounts. *Id.* § 25878 art. 3(G)(4).

24. A generator is a person whose activity, excluding the management of LLW, results in the production of LLW. *Id.* § 25878 art. 2(E).

25. Establishment of the third-party liability fund is at the discretion of the host state and will not limit the responsibility or liability of the operator. *Id.* § 25878 art. 3(G)(3)(b). If created, the fund must provide compensation to persons for personal injury and property damage sustained during the operation, closure and stabilization, postclosure, and institutional control periods of the regional disposal facility. *Id.* See *infra* note 36. See generally Cohen, *Who Pays The Bill: Insuring Against the Risks from Low Level Nuclear Waste Disposal*, 21 NAT. RES. J. 773 (1981) (analysis of cost and problems of closing LLW disposal facilities).

26. CAL. HEALTH & SAFETY CODE § 25878 art. 3(G) (West Supp. 1988). The purpose of the local government reimbursement fund is to reimburse local government for increased costs and burdens related to hosting a regional disposal facility. *Id.* § 25878 art. 3(G)(3)(c).

Commission has the power to contract,²⁷ to intervene in judicial and administrative hearings,²⁸ and to sue.²⁹ Further, the Commission may, consistent with applicable federal and state laws, recommend land and railroad transportation routes for carriers of LLW.³⁰ The Commission may allow non-compact states to import LLW into the compact region only after the host state and the Commission assess the affects of adding new waste to the regional disposal facility.³¹ A generator, group of generators, or the host state may petition to export LLW for disposal outside the compact region at another disposal facility.³²

RIGHTS AND RESPONSIBILITIES OF THE HOST STATE

Chapter 52 designates California as the host state for the first thirty years of the compact.³³ As the host state, California must develop the regional disposal facility on a timely basis.³⁴ The state must protect and preserve the public's health and safety in the siting, design, development, licensing, regulation, operation, closure, decom-

27. Contracts with the Commission cannot bind a party state. *Id.* § 25878 art. 3(G)(14).

28. Intervention must be approved by a majority vote of Commission members. *Id.* art. 3(G)(16).

29. *Id.*

30. *Id.* § 25878 art. 3(G)(18). The federal government has generally preempted the states in regulating the transportation of hazardous and radioactive waste. *See* 49 U.S.C.A. § 1811(a) (West 1976). Exceptions are allowed in cases where a state agency applies to the Secretary of Transportation, who before granting an exception must determine whether state regulations offer an equal or greater level of protection to the public and are not unreasonably burdensome to commerce. *Id.* § 1811(b). In California, the California Highway Patrol is responsible for routing and enforcing regulations concerning carriers of LLW on the highways. CAL. HEALTH & SAFETY CODE § 25878.1 (West Supp. 1988). The state Public Utilities Commission is in charge of routing and enforcing regulations concerning transportation of LLW by railroads. *Id.* § 25878.2.

31. *Id.* § 25878 art. 3(G)(19). The following factors must be met: (1) Approval by a two-thirds vote of the Commission, and (2) assessment of the facility's ability to handle the imported LLW, and relevant environmental and economic factors as determined by the host state's appropriate regulatory authorities. *Id.*

32. *Id.* § 25878 art. 3(G)(20). The Commission may stipulate a limit to the time period or the amount of LLW exported. *Id.* However, a two-thirds majority will be necessary to authorize exporting of LLW outside the region if the sole purpose of the exportation is to process the material for recycling. *Id.* § 25878 art. 3(G)(21).

33. *Id.* § 25878 art. 4(C)(1). The 30-year period begins once the California regional disposal facility becomes operational. *Id.* California has the option of extending the 30-year period as the host state. *Id.* If California does not elect to continue as the host state, the party state which is the largest generator must become the host state for a term of at least 30 years. *Id.*

34. *Id.* § 25878 art. 4(E)(1) (two sites in San Bernardino County are still being considered). A regional disposal facility is a nonfederal LLW disposal facility established and operated under this compact. *Id.* § 25878 art. 2(P).

missioning, and long-term care of the regional disposal facility.³⁵ Chapter 52 also requires the host state to charge fees for disposing of LLW at the facility that are sufficient to: (1) Ensure the safe disposal of the LLW and the long-term care of the regional disposal facility; (2) cover the costs of inspecting, enforcing, and keeping activities under surveillance at the regional disposal facility; and (3) absolutely prevent charges from being used to discriminate against a party state.³⁶ The host state and operator must notify the Commission immediately after any event occurs which might lead to the temporary or permanent closure of a regional disposal facility.³⁷

RIGHTS AND RESPONSIBILITIES OF PARTY STATES

The compact specifies that all LLW generated in the compact region must be disposed of at a regional disposal facility, and each party state must have equal access to the facility without discrimination.³⁸ Each party state must establish requirements for packaging and transporting LLW that originates within the party state and is destined for disposal at a regional facility.³⁹ A surcharge may be imposed upon generators within a party state to cover the costs of enforcing the compact requirements.⁴⁰ When a host state sends no-

35. *Id.* § 25878 art. 4(E)(2). The host state may close the facility if necessary to protect public health or safety. *Id.* § 25878 art. 4(C)(2). Site closure and stabilization are the activities taken by the operator at the end of the disposal facilities operation life to protect the public from continuing residual radioactivity or other hazards. *Id.* § 25878 art. 2(Q). Postclosure is the period during which the licensee must continue to observe, monitor, maintain, and repair the disposal facility to ensure the site's stability, and to prevent ongoing active maintenance. *Id.* § 25878 art. 2(O). The institutional control period begins when the facility license is transferred to the disposal site owner in compliance with applicable regulations for long-term observation and maintenance. *Id.* § 25878 art. 2(H).

36. *Id.* § 25878 art. 4(E)(3)(a)-(c). Low-level radioactive waste generated within the region must be disposed of at regional disposal facilities, and each party state must have access to any regional disposal facility without discrimination. *Id.* § 25878 art. 4(B).

37. *Id.* § 25878 art. 4(E)(5). The host state must also submit an annual report to the commission detailing the status of the facility, including a projection of how much disposal capacity remains in the facility. *Id.* § 25878 art. 4(E)(4).

38. *Id.* § 25878 art. 4(B). Party states are not permitted to join another compact entered into under the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C.A. §§ 2021b-2021j (West Supp. 1988). CAL. HEALTH & SAFETY CODE § 25878 art. 4(D) (West Supp. 1988). In addition, all party states have an obligation to use good faith in performing their duties, obligations, and responsibilities under the compact. *Id.* § 25878 art. 4(F)(6).

39. *Id.* § 25878 art. 4(F)(1). The requirements should comply with federal regulations and must include at least periodic inspections of packaging, shipping practices, and LLW containers in the possession of transporters, as well as enforcement provisions against violators. *Id.* See generally 10 C.F.R. §§ 71.0-71.137 (1983) (packaging and transportation of radioactive material).

40. CAL. HEALTH & SAFETY CODE § 25878 art. 3(G)(3) (West Supp. 1988).

tification that a person⁴¹ from a party state has violated packaging, shipping, or transportation requirements, the party state has an obligation to take actions to ensure that the violations will not continue.⁴² In addition, the party states must encourage all generators within the state to reduce the volume of LLW.⁴³ The party states agree to compensate parties who suffer injury or property damage from the operation of a regional disposal facility, only to the extent that the level of compensation exceeds the operator's insurance limits.⁴⁴ The party states will not be liable, however, solely because of compact membership, for harm or damage caused by a regional facility outside the state, nor will they assume liability for the siting or activity of a regional disposal facility.⁴⁵ Finally, host and party states may withdraw from the compact by repealing the enacting legislation of this compact.⁴⁶ A party state may be expelled from the compact for failure to comply with obligations of the compact.⁴⁷

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41. Person includes any public or private individual, corporation, partnership, or other legal entity. *Id.* § 25878 art. 2(N).

42. *Id.* § 25878 art. 4(F)(3). The actions may include requiring the violator to post a bond or prohibit future shipments of LLW to the regional disposal facility. *Id.*

43. *Id.* § 25878 art. 4(F)(5). Individual party states must maintain a registry of all generators that may dispose of LLW within the state. *Id.* § 25878 art. 4(F)(4). The party states must provide any data or information that is necessary for the Commission to perform their responsibilities. *Id.* § 25878 art. 4(F)(1).

44. *Id.* § 25878 art. 4(F)(9) (the money may come from the third-party liability fund).

45. *Id.*

46. *Id.* § 25878 art. 7(C). The repeal will not be effective until five years after the date of repeal for a host state and two years after that date for a party state. *Id.* If a party state withdraws, that state must make arrangements for the disposal of the other party states' LLW for a time period equal to the period of time the state was a member of the compact. *Id.*

47. *Id.* § 25878 art. 7(D) (requiring a two-thirds vote). Invalid provisions of the compact are severable from the valid portions. *Id.* § 25878 art. 8(C). The compact must not be construed to infringe unnecessarily upon the sovereignty of the party states nor usurp federal powers. *Id.* § 25878 art. 8(A). Rather, the compact must be broadly construed to carry out the purposes of the compact. *Id.*

Environmental Protection; transportation of inhalation hazards

Vehicle Code §§ 32050, 32051, 32052, 32053, 32100, 32100.5, 32101, 32102, 32103, 32104, 32105, 32106, 32107, 32108, 32109 (new); §§ 290, 31302, 31618, 32002, 40000.19 (amended).*

AB 2705 (Katz); 1988 STAT. Ch. 1384

AB 3722 (O'Connell); 1988 STAT. Ch. 1222

Existing law regulates the transportation of chemical rocket propellants¹ as explosives and all other chemicals that are toxic when inhaled as hazardous materials.² The legislature, in enacting Chapter 1384, classifies rocket propellants as an inhalation hazard³ and severely regulates transportation because of rocket propellant's threat to the public safety and welfare.⁴

Chapter 1384 requires all carriers of inhalation hazardous materials to use routes specified by the California Highway Patrol (CHP), except when the vehicle is en route to a safe stopping place,⁵ safe parking place,⁶ or inspection stop.⁷ Exceptions to these routes are

* CAL. VEH. CODE §§ 31302, 31303, 32104, and 32105 become effective January 1, 1992.

1. CAL. VEH. CODE § 31302(a) (chemicals include anhydrous hydrazine, fuming nitric acid, and liquid nitrous tetroxide).

2. *Id.* §§ 27903, 31302. Compare *id.* § 27903 (regulations on transporting hazardous materials require placards and markings on vehicle, routing through uncongested areas, and restricted residential overnight parking) with *id.* §§ 31602, 31607, 31608, 31609, 31611, 31614(a)-(c), (g) (regulations on equipment, licensing, routes, and inspections when transporting chemicals listed in section 31302) and *id.* §§ 32104, 32105, 32106, 32107, 32108 (regulations on onboard equipment, routes, stopping places, and inspections when transporting inhalation hazards).

3. CAL. VEH. CODE § 32101(a) (definition of inhalation hazards). See 49 C.F.R. §§ 172.203, 173.326 (1987) (definition of inhalation hazards).

4. CAL. VEH. CODE § 32100. These chemicals are highly toxic, spread rapidly, and require rapid evacuation in the event of a spill or fire. *Id.* Chapter 1384 applies only to inhalation hazards transported in bulk packaging. *Id.* § 32101(b). See also *Assembly Legislative Task Force on the Transportation of Extremely Hazardous Materials*, (November 2, 1987) (copy on file at *Pacific Law Journal*) (Chapter 1384's provisions are based on this report). See *Chemclene Corporation v. Commonwealth of Pennsylvania Department of Environmental Resources*, 91 Pa. Commw. 316, 497 A.2d 268, (1985) (provisions of statute requiring transporters of hazardous waste to file collateral bond as condition for obtaining hazardous waste transportation licenses did not impermissibly burden interstate commerce so as to be a violation of the Commerce Clause). But see *Browning-Ferris, Inc. v. Anne Arundel County, Maryland*, 292 Md. 136, 438 A.2d 269, (1981) (holding that provision prohibiting disposal and transportation of various hazardous wastes through the county violated the Commerce Clause).

5. CAL. VEH. CODE § 32101(f) (definition of safe stopping place).

6. *Id.* § 32101(e) (definition of safe parking place).

7. *Id.* § 32104. See *id.* § 32101(d) (definition of inspection stop). The CHP must hold public hearings on the proposed routes and consider the following in choosing the routes: (1) Population density; (2) capabilities of the local emergency response personnel; and (3) safety

allowed for delivery and receipt of cargo, compliance with traffic control authorities, and when the vehicle is disabled.⁸ The vehicle, however, must always avoid congested areas unless no practicable alternative is available.⁹ A violation of Chapter 1384 is a misdemeanor.¹⁰ Chapter 1222 requires seventy-two hour advance notification¹¹ to the CHP,¹² and police chiefs or sheriffs when specified substances¹³ are scheduled for bulk transportation¹⁴ through their towns.¹⁵

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of the roadways. CAL. VEH. CODE § 32102(b)(1). The CHP also must consult with fire prevention officials along the proposed routes as well as the representatives from transporters and manufacturers of the inhalation hazards materials. *Id.* § 32102(b)(2). The CHP must prepare maps showing safe stopping places, inspection stops, and make the maps available to the carriers. *Id.* § 32102(c), (d). Each vehicle must be equipped with: (1) A map indicating routes, safe stopping places, and inspection stops; (2) a self-contained breathing apparatus; and (3) emergency communications equipment. *Id.* §§ 32103(a), 32107.

8. CAL. VEH. CODE. §§ 32104, 32105(a). Parking unattended on public streets is prohibited and equipment must be inspected before and during transportation. *Id.* § 32105(b)-(e).

9. *Id.* § 32105(a). Operating convenience cannot be used to determine what is practical. *Id.*

10. *Id.* § 31618(a). Punishment for a first violation is a minimum fine of \$1,000, a maximum of six months imprisonment, or both. *Id.* Punishment for a second and subsequent violation is a fine of at least \$2,000, a maximum of six months imprisonment, or both. *Id.* § 31618(b).

11. The notification must include: (1) The name, address, and emergency telephone number of the manufacturer, shipper, carrier, and receiver of the shipment; (2) a current copy of the material data sheet; (3) for shipments originating in California, the point of origin, the estimated time of departure within 48 hours, and the destination and estimated time of arrival within 48 hours; (4) for those shipments originating outside of California, the point of origin, the destination, and the estimated time of arrival within 48 hours; and (5) the telephone number and address for current shipment information. *Id.* § 32051(a).

12. *Id.* § 32052(a). Notification must reach the CHP 72 hours before the beginning of the 48 hours immediately preceding the estimated departure time of the shipment. *Id.* In turn, the CHP must notify police or sheriff officials at least 36 hours before the beginning of the 48 hour departure period; they will notify the fire officials in towns meeting the size requirement (population greater than 15,000 which is not served by 50% volunteer force). *Id.* § 32050(c)(2). Changes must be communicated in the same manner to the local officials. *Id.* § 32052(b).

13. *Id.* § 32050 (anhydrous hydrazine, methylhydrazine, dimethylhydrazine, fuming nitric acid, flourine, or liquid nitrogen tetroxide).

14. See *id.* § 32050(c)(1) (definition of bulk packaging).

15. CAL. VEH. CODE. § 32053. Violation results in a civil penalty between \$500 and \$1,000 depending on the extent of the harm, the persistence of the violation, the number of prior violations, and the deterrent value of the penalty based on violator's financial resources. *Id.*

Environmental Protection; underground storage tanks

Health and Safety Code § 25283.5 (new).

AB 190 (Bradley); 1988 STAT. Ch. 876

Sponsor: Industrial Circuits

Support: East Bay Municipal Utility District; California Manufacturers Association; California Forest Protective Association

Existing law regulates underground storage tanks containing hazardous substances.¹ Under Chapter 876, an underground storage tank is exempt from specified regulations if all the following conditions are met: (1) All exterior surfaces can be monitored by direct view;² (2) the tank is located in a structure that provides for secondary containment of the tank contents;³ (3) the owner or operator of the tank inspects the tank daily and records the results of the inspection;⁴ (4) a local agency determines that the tank meets requirements which are equal to or more stringent than the regulations required by provisions of Health and Safety Code Chapter 6.7;⁵ and (5) the tank is located in a county of the third class.⁶

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1. See CAL. HEALTH & SAFETY CODE §§ 25280-25299.6 (regulations concerning Underground Storage of Hazardous Substances).

2. *Id.* § 25283.5(a) (requiring all connecting pipe and the floor directly beneath the tank must also be exposed to direct view).

3. *Id.* § 25283.5(b). See 40 C.F.R. § 265.193 (1988) (lists requirements for containment and detection of releases).

4. CAL. HEALTH & SAFETY CODE § 25283.5(c). See 40 C.F.R. § 265.195 (1988) (list of owner inspection requirements).

5. CAL. HEALTH & SAFETY CODE § 25283.5(d). See *id.* §§ 25280-25299.6 (requirements for underground storage of hazardous substances).

6. *Id.* § 25283.5(e). A third class county has a population between 1.3 and 1.4 million people. CAL. GOV'T CODE § 28024.

