

MEMBERS PRESENT: Chairman Jeffrey  
Vice Chairman Redelsperger  
Mr. Mello  
Mr. Dini  
Mr. Polish  
Mr. Rhoads  
Mr. Kovacs  
Mr. DuBois  
Mr. Schofield

MEMBERS ABSENT: None

GUESTS PRESENT: See Attached Guest List

Chairman Jeffrey called the meeting to order at 2:00 p.m. He noted there are a number of bills that deal with the subject of hazardous waste and the committee plans on taking testimony on the bills today and then appoint a subcommittee to work on whatever amendments need to be made. He further noted there is a number of people here to testify and due to the number of bills and the number of people, testimony will be limited to ten minutes each. He asked they also try to avoid redundant, repetitive testimony as much as possible.

AB 196 Provides for regulation of hazardous waste.

Assemblyman Jim Schofield, representing District 12 in Clark County: The State of Nevada at this particular time is on an area of grave concern regarding the problems of hazardous and chemical waste disposal and regulation. This bill will put the State of Nevada in a regulatory position within our own Division of Environmental Protection for our own state but is under the umbrella of the Department of Conservation and Natural Resources. The purpose for this bill is to bring into law regulations in allowing these type regulations to be clarified, specified, and to do the things that we feel necessary as well as from the research that I have done regarding this and the Division of Environmental has done, to protect the citizens of the State of Nevada -- protect their health, safety and welfare. This is a move that I feel is very important and incumbent on the Legislature to consider this measure. I would like to go through the bill briefly. Most everybody here, I'm sure, has read it. I think it is important enough, but there is no use going through it entirely. I would like to mention a few amendments that might curtail some of the future testimony.

On page 1, line 23, subsection 2 of section 2: "Establish a program for regulations of the generation storage, transportation, treatment and disposal." I think that will satisfy some of the questions and problems with some of the people that are in the audience.

The second amendment, on page 2, line 29: Actually between line 29 and 30, add a subsection with the definition of manifest. "Manifest meaning the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste

Mr. Schofield continued:

during its transportation from the point of generation to the point of storage, treatment or disposal."

On page 2, amending section 10, the word person. I would like to see lines 30, 31, 32 deleted entirely and add this new definition to person, which will bring it into conformity with federal law and be used to show control of the same universe: "Person means any individual, trust, firm, joint stock company, corporation, partnership, association or other legal entity, state, municipality, commission, political subdivision, interstate body or federal department, agency or instrumentality." I think this will solve any of the confusion between what we might put in there that might conflict with the federal regulations.

The next amendment would be on page 3, section 14, line 7, add a word: "govern, generation, storage" This should be done for the same reasons I mentioned for item one on the management of hazardous waste which begins with the generator itself. The generators must comply with the packing, labeling, manifesting and reporting requirements to manage hazardous waste from the cradle to the grave. The generator must be required to initiate the regulatory compliance process.

Next, line 23, adding a subsection 9 to section 14: "The regulation of the generation of hazardous waste is limited to record keeping practices, labeling practices, for any containers, use of appropriate containers, furnishing of information of the general chemical composition, use of a manifest system, and submission of reports to the department." The term generation being proposed is broad; it implies that the state could regulate manufacturing processes, and we wanted to clarify that, and the subsection 9 indicates the part of generation that the department needs to actually regulate.

On page 3, section 15, I would like to delete subsection 2, lines 27 through 32. This could become very controversial and it is the feeling that those lines should be deleted so there is no question about overcapping the scope of the federal program. We certainly don't want to put ourselves under more stringent regulations, but we would at least comply with the federal program.

On page 4, line 46, section 21: This section should be deleted in its entirety for the same reasons just mentioned on the deletion of the other two -- to not become controversial within the scope of the bill and the law.

On page 7, line 6, section 31, subsection 1, I would like to add contributes to in place of abets. Abets is a term implying criminal violations and this section would certainly be more clear by using the words contributes to.

I know there are many people here to testify on AB 196. We have done an awful lot of research on this. I feel that AB 196 will in fact bring the State of Nevada into this era that I mentioned before

Mr. Schofield continued:

as far as hazardous waste definition regulations to do with the transportation and treatment and storage. It is a beginning of a situation that will be very helpful regarding hazardous and chemical waste. With that Mr. Chairman, I won't take up any more time to allow other testimony.

Harvey Wittemore, Attorney with Lionel, Collins & Sawyer of Reno, representing the BKK Corporation of Nevada, Inc., which is a Nevada-based transport and waste disposal operation, introduced E. T. Winter, Director of that company.

Mr. Winter: I have been Director of the BKK Corporation for the last 20 years. As a matter of qualification, our corporation served on Governor Reagan's Task Force in 1969 which resulted in the creation of similar regulations in California which have been functioning successfully since that time. Our company manages approximately half a million tons of hazardous waste a year and about a million tons of solid waste. Additionally, we operate a rubbish solid waste transfer station which moves some 2,000 tons a day to the more remote land fills. We are truly pleased to see this bill come along in Nevada. It is virtually impossible to attempt to manage the hazardous waste that is produced in a vacuum. These regulations, if approved by your honorable committee, will go a long way to placing the state in line with the ongoing federal program. We currently move from Nevada to California for disposal. In 1980, the total was 1,393,616 gallons of hazardous waste. It would be a far better thing for the producer if he were able to manage those closer to home. It would be a lot more economical.

The state of the art of hazardous waste disposal today is waste water treatment plants in some facilities, land filling where the geology provides a secure site, and high temperature destruction. It is our opinion that land filling is perhaps in the final throes of its existence as a state of the art. We are designing for this high volume tonnage in California, a waste water treatment in the Los Angeles Harbor, and an incinerator, a high temperature destructor, in a more remote and less urban area. We will be coming to the State Department in the near future for the establishment of a high temperature destructor in the Beatty area. I would like the committee to know that now.

In closing, we find nothing wrong with the bill. I reviewed the amendments, as Assemblyman Schofield was presenting them, and I have no trouble with them. I did not even have any problem with paragraph 21. That concludes my remarks and if you have any questions, I will be pleased to respond.

Mr. Wittemore: My comments specifically go to page 6, line 47, section 30, subsection 3, which provides that the court may not deny a temporary restraining order or an injunction because the Director has failed to show that there is no adequate remedy at law or because he has not shown that irreparable harm will result from the act or practice which is the subject of the action.

Mr. Wittemore continued:

We have a little bit of a problem with the standard which is going to be imposed. Basically it means that the court would not have any discretion, that simply at the Director's request, a temporary restraining order would have to be issued, without having the Director show the reason why. And again, because it says that he does not have to show that irreparable harm will result, it simply takes away the discretion that the courts have traditionally had with respect to these types of issues. We certainly understand that a decision would have to be made very quickly, and the amendment that we would support would simply require that a decision would be made in a specified period of time so that the court can maintain control over these types of problems with any company which is evidencing problems. I will provide a proposed written amendment which would indicate that these decisions would have to be made within a suitable period of time, we would think 3 to 5 days.

Again, those are the only comments we have about the bill. We think the bill is well drafted. We would support Assemblyman Schofield's efforts in regard to the proviso that we could take away some of the owner's burdens which would be cast with respect to section 30, subsection 3.

Mr. Kovacs: If you want to take away, or deny, the restraining order, what's the difference now and doing it within 3 to 5 days? The rationale goes to the standard which is being imposed. When a party seeks a temporary restraining order, he has to make a showing, basically showing that he will suffer irreparable injury if the temporary restraining order (TRO) is not entered and that is no adequate remedy at law, i.e., we are talking about an equity proceeding, that the individual goes in and says, "You have to do something now, otherwise I can never be made whole again." This particular standard is extremely, extremely broad. It simply suggests that the Director goes in and, the way that we read this section 30, simply says that these are the operative facts, please enter a temporary restraining order doing anything that we are asking the Director, again allowing the Director to seek and get anything that he desires. What we are specifically talking to is again, the standard. This is entirely inconsistent with present Nevada law and the law throughout all other 49 states with respect to when a temporary is going to be issued.

Mr. Wittemore: Before a temporary restraining order is issued, you have to show that there is no adequate remedy at law and that you are going to suffer irreparable injury. In view of the fact that what we are talking about is a very, very serious type of matter, we would be willing, again representing one specific company, that we would like to see a hearing be held within 3 to 5 days on this, so that the normal operations are not hindered at all.

Mr. Schofield: I think the intent of the bill was to give the Director that authority.

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Mr. Kovacs: To let this take 3 to 5 days or longer as we go into court matters, etc., it could end up with this going on for as much as a month or more.

Mr. Wittemore: I think maybe what you should do, and again this is simply a possible way to approach the problem, is to compel the district courts to put this as a priority item so that you can have a full hearing with respect to the issue and make sure there are not any ex parte temporary restraining orders issued. You would have the court make a decision on the basis of hearing positions from both sides, and maybe that would solve the problem. We certainly understand we can't have companies violating the regulations that are going to be promulgated under this law, assuming that it is passed. But we are simply talking about, as the standard is now written, that the Director would go into court ex parte and get a TRO shutting down the operation. We are simply suggesting that it would be beneficial for both parties to have a little bit, not a sizeable delay, but simply an opportunity to make their presentation to the district court.

Unknown: Do you feel this would be unconstitutional?

Mr. Wittemore: I think there is a good possibility that it might be unconstitutional. Again, with respect, because we are dealing with such an important item, and on behalf of BKK, we certainly understand that we should have some mechanism so that this issue can be decided very quickly, but we are concerned about the standard that is expressed in the bill.

R. W. Marshall, Attorney in Reno of the firm of Vargas, Bartlett, Marshall: I appreciate the opportunity of coming here today. I have indicated that I generally am going to speak in opposition of AB 196. I am here representing Duval Corporation, Basic Incorporated, and Houston International Minerals. These are three mining companies. I have one specific problem with this piece of legislation but in talking with Mr. Vern Ross of the Environmental Commission before I came in here, I believe that they are going to take care of this problem. This will be brought out in testimony which they will offer subsequent to mine. The main problem I have is that this does not exempt mining wastes consistent with the federal exemption which presently exists. To be consistent with the federal laws and regulations, I believe the mining wastes should be exempt in a similar fashion. I don't have that language with me but I can give you a reference to it, the 45 Federal Regulation 76618 promulgated on November 19, 1980. That is where the exemption came from in the Federal Register. If that specific exemption is included in here, that would take care of my primary problem with this. I have a number of specific things and then I have some general comments I would like to make.

First has to do with the definition of hazardous waste on page 2, line 13, section 8. As I read the definition of hazardous waste as appears in the Resource Conservation Recovery Act (RCRA) that appears in 42 U. S. Code at section 6903, page 744, subparagraph 5, the definition of hazardous waste in the federal law generally follows one under section 8. It does not include paragraph 2

Mr. Marshall continued:

I am wondering if maybe we are not inviting ourselves to perhaps go beyond the federal definition or at least be at variance with. Now I realize there was an amendment to RCRA in October, 1980. I tried this morning to get a copy of that at the Washoe County Library and was not able to. There are not any advance sheets yet, and perhaps they did amend it. I think it unlikely however, and perhaps this should be taken care of.

Furthermore, this paragraph 2, under section 8, invites or requires the department to undertake studies to determine what is or is not hazardous waste. Anybody that knows anything about this area of federal legislation, and I must confess I know very little about it, knows that it is terribly complex, very lengthy, involves a tremendous amount of research. I really don't think that the Nevada Legislature wants to foist that kind of duty or problem on the Nevada Department.

I notice that the manifest system, page 3, line 17, section 14, subparagraph 7, might not necessarily coincide with the federal regulations in that area. Up above in the preceding paragraph 6, it makes specific reference to a regulation in a manner consistent with regulations issued by the United States Department of Transportation. I would suggest that section 7 could have similar language. Then the regulations under section 7 would be consistent with the EPA regulations. That may be something else you might want to take a look at, to be sure we are not going beyond that.

I have been advised by my clients that they believe that on page 4, line 18, section 18, paragraph 3, the five year period is perhaps too short a period of time. Gearing up to comply with the permit requirements could be an expensive procedure involving substantial funds. Perhaps the people here from U.S. Ecology, who I understand are going to testify, might know about this. In any event, if substantial funds are expended, perhaps five years is too short a period of time and we might look at something like ten years to give a little more stability to their operation.

I have a problem on page 4, line 27, with section 19, paragraph 1 and 2. This seems awfully open ended to me, and perhaps that is the only way it can be done, but the financial responsibility is really two-fold. One is liability insurance for continued operations in paragraph 1 and in paragraph 2, it has to do with security. When the plant shuts down, they will clean it up or do whatever they have to do in the event of abandonment. The amount is any amount which the department has determined. I really think we have been wronged with this type of legislation, particularly on the federal level where they leave the door wide open to the administrative agencies to do whatever they want to do. I would suggest to you that this is a difficult area in determining how much should be required. Perhaps a formula could be worked out. I would recommend to you that the subcommittee turn their attention specifically to this because I think that an unlimited amount of bonding or whatever that might be required could be pretty onerous on an operator. It leaves to the discretion of the administrators,

Mr. Marshall, continued:

practically without control, as to what kind of security or the amount of security that is going to be required. Furthermore, the time of abandonment might be 40 years hence. I suggest to you that this needs further refining and study.

Under page 5, line 27, section 24, paragraph 2, it seems to me the reporting requirement there could be very onerous. For instance, assuming that this did apply to mining companies, the company has to report each activity to the department and I am wondering if this is every time they fire up a rotary kiln which is going to produce some tailings. Everytime they fire up their kiln, are they going to have to report that as a separate incident? What about a hospital? Everytime that they have a surgery scheduled that is going to require the production of waste which might be covered by this, are they going to have to report that? I think the way it is worded here could be extremely onerous, if there is to be literal compliance with the act. I really suggest to you that that should have some further study also.

Like the gentlemen that preceded me, I have problems with page 6, line 47, section 30, subsection 3, having to do with relaxing the standards which ordinarily pertain before injunctions can be sought from a court. I can envision a situation where you have a fairly substantial facility involving a lot of employees. Certainly if substantial or irreparable harm is going to be incurred because of continued operation, then an injunction should be issued and that is historically what the law says. But to do away with that safeguard seems to me would allow perhaps, on slim evidence which could be refuted, and without a substantial or proper showing, an immediate shutdown of a facility with lots of people put out of work. I would agree with the preceding gentlemen that these safeguards are not unreasonable, if irreparable harm is going to ensue because the activity continues, then they can get the injunction. But I really think we should not do away with that safeguard. It is not going to be too onerous. If there is irreparable harm, it surely can be shown. This has been in our law, our jurisprudence structure for many, many years.

Page 7, line 12, section 31, subsection 2, I believe a comparison should be made with section 3008 A3 of the 1980 amendments to RCRA. Apparently under the federal law, before the civil penalty is imposed, there has to be an order determining that there is a violation. There has to be a time period set forth where the violator can remedy the wrong, and then if he fails to remedy it in that period of time, then the civil penalty comes into effect. This is what has been represented to me. I tried to find a copy of the 1980 amendments and they were not in the advance sheets in the Washoe County Library. But I think the subcommittee should check on this because we should not be more onerous than the federal act in this instance. The way it is now, it would appear that there is practically strict liability. The acts could fall in a rather heavy fashion. I think this is an area that should be studied.

Mr. Marshall continued:

Some general comments. I have gone through here and marked dollar signs down in the margins in every area where I think it is going to cost the state a bunch of money. I could go through these one at a time but I won't. It is amazing how many places I have marked. I think we want to be very careful at this time in adopting what is probably one of the most complex pieces of legislation that you could possibly have, or maybe that has ever been passed, by the United States Government. What we are doing here is saying we are going to take this onto ourselves and now we are going to administer it. We want to be careful in knowing what it is going to cost us. Some people might say that we are going to get money from the Federal Government, but I think we have to look at the mood in Congress. I want to hand out one little piece of paper that gives you an idea of the confusion which presently exists in the federal regulations under RCRA. I am wondering if we are going to be adopting a law and regulations thereunder which are not going to fit within RCRA, since they don't know really where they are going at this point. (EXHIBIT A)

Mr. Schofield asked Mr. Marshall to please present to the committee in writing the items that were discussed, relating to the dollar amounts.

Mr. Marshall: Relating to the dollar amounts, I don't have the amounts, but I have areas where it looks like it is going to cost a lot of money.

Mr. Kovacs asked whether he had a figure, not that it made an awful lot of difference when talking about public safety.

Mr. Marshall: No, I'm sorry, I could not honestly give you that estimate because in my own mind I don't know. I look at it and I don't see how you could administer it for under a half million dollars a year, or more. It is just a guess; I am not qualified to give you that kind of an answer.

JoAnne M. Buehler, Biologist and Manager of Public Affairs for U.S. Ecology: We manage a chemical waste disposal facility in Beatty, Nevada, that handles approximately 800 tons of hazardous chemical waste per year. I am here to speak in support of AB 196, with its amendments and any intended amendments exempting the mining operations. We have no problems with the five year maximum permit levels that were suggested. We view this legislation as enabling the State of Nevada to have regulatory authority to oversee hazardous waste programs involving both the generators, transporters, disposers, and resource and recycling activities. Our Beatty operation is only a small portion of the overall chemical hazardous waste situation in the State of Nevada. We are in favor of state regulated hazardous waste programs under the Resource Conservation and Recovery Act recently mentioned. AB 196 we believe will empower the state to control the activities of all hazardous waste including the PCP storage facility near the Beatty Airport. We feel that this legislation is going to enable the State of Nevada to control hazardous chemical wastes in the same fashion



Ms. Buehler continued:

as it has powers to control radioactive wastes. I will not be testifying per se on any of the additional bills, but I will be available for questions if they come up.

John (DuBois?): What would you do with the phosphates and nitrous oxides that we also have? These are all classified hazardous waste along with others such as arsenic that is coming out as a gas from our coal furnace fired power plants. Others very hazardous to health also.

Ms. Buehler: Do you mean "how do we handle it?"

Mr. DuBois?: Yes, how do you handle it.

Ms. Buehler: Are you talking about wastes that have somehow been trapped through precipitators at a power plant or end collected?

Mr. DuBois?: Not really, those are wastes that are tremendous that we are not trapping now.

Ms. Buehler: I agree, they are. That would have to go through air pollution. A large portion of those can be collected through precipitators or through off gas systems that are being used in nuclear facilities and they could be applied to other kinds of power plants or industrial facilities. Under the RCRA Act, I don't think those gaseous wastes are being considered.

Mr. DuBois?: These that I have just mentioned, our coal powered plants, not nuclear plants, the nuclear are safe.

Ms. Buehler: Right! The only thing I think you could do would be to require off gas systems to trap them and hold them up, that is all I can envision. There may be some other comments from other people.

Mr. Schofield: You mentioned the five year system; I didn't hear what you said regarding that.

Ms. Buehler: We have no problem with the maximum five year permit system. We don't see that is presenting an enormous problem or an enormous expense.

Mr. Schofield: Your mention of the other bills that have come out today, you said you will or will not be here to testify.

Ms. Buehler: I will be here to answer questions at this point. There are two other people here from U.S. Ecology who will speak. All three of us will be available for questions.

Assemblyman Rackley, representing District 37: What I have here is actually a written testimony from Ronald Chadek (attached as EXHIBIT B.) Mr. Chadek is the Chairman of the Board of Directors of the Lovelock Alfalfa Seed Growers Association. They have one

Mr. Rackley continued:

request that they would like to enter and that is that agriculture operations would be exempt from this bill as they are now covered under the EPA by the federal regulation. They have been operating under this for some 6 or 7 years. They are an authorized dump site within the area where they collect the containers, used containers, and they are stored. They are asking if it could be left under the EPA as they are now. They are presently exempted under the bill in effect in this state. If agriculture operations are to be included, then they have several specific reservations in regard to the bill. They have listed them according to section, page and line number. I think that probably instead of taking up your time, I will present this to you and it can go to your sub-committee who is doing the study on the bill.

Mr. Schofield: A point of clarification concerning the mining and agriculture exemption. I did receive some amendments that I couldn't make recommendations for, understanding the problem they have and the coverage that they are, but we will address ourselves to those.

Daisy Talvitie, representing the League of Women Voters of Nevada: The league has devoted much of its time and energy in the last several years to the study of hazardous waste. I am sure that some of you at least has received the publication that we have put out about a year ago which was headlined in red ink. I personally represented the league at a conference in West Virginia which was the National Conference on this subject, last November, where we met directly with representatives of other state agencies, local agencies, citizens, labor, etc., and had a chance to talk directly face to face with people from the Love Canal situation, and from a lot of other areas, where we got a very vivid picture of just what the damages are that can occur from improper management of hazardous waste. Congress has said that is probably the most acute domestic, or one of the most acute domestic, threats to the nation today. It has declared it almost a crisis situation and it has said it is unbelievable what is happening out there. And that is true! That is exactly what brought RCRA into being. The Resource Conservation and Recovery Act, they view as an emergency, as an absolute necessity. Also throughout all their reports which we have studied they have emphasized the fact the only way we will ever get the job done is for each state and all the citizens to work with the Federal Government in order to do it and even then it is going to be a very difficult task to handle the hazardous waste problem which we have neglected for so many years. Therefore, the League will say to you, that this bill is a must pass bill. That is our position, and it is not to say we think it is perfect. We do have amendments to offer. But we do want to emphasize that the fact that we are offering amendments which in no way should detract from the fact that this is basically a must pass bill. The League, however, wants to call to your attention one major deficiency, and then we have a series of rather small ones, some of which can be skipped because they have been presented by other people. (The League statement is attached as EXHIBIT C.)

Curtis Carter representing the Anaconda Copper Company, testimony is attached as EXHIBIT D.

Carl Cahill, Assistant Director of the Environmental Health Division for Washoe County District Health Department: We have been dealing with, among other things, toxic and hazardous materials, wastes, since 1972. This legislation I view as being critical and I must go along with Ms. Talvitie. I view it as a must pass. It is a first step and it is critical to the health and well being of the residents of the State of Nevada as well as the visitors who come to this state.

In the definition of "hazardous waste" page 7, line 45, pathological waste is being removed from the definition. Our Health Department has been involved to a great extent in regulating the disposal, handling and processing of infectious materials that come out of hospitals. I think that should probably remain a function of the Health Department and on that basis I refer back to page 3. One recommendation from Assemblyman Schofield was to delete lines 27 through 32 in subsection 2. We would like to see a change in wording there that would allow the department to delegate regulatory authority to any state agency, county, city or other political subdivision or other state, district, county or city board of health. One of the reasons is that the federal funding is not necessarily permanent. This is a gigantic job that the state is undertaking, extremely critical, and we feel that should federal funding stop, there are local agencies that can provide some support.

I'll put on another hat, if I may, as a member of the Nevada Public Health Association. I'm on the Executive Committee and the Nevada Public Association did adopt a resolution at their September meeting of 1980, urging strong support of state enabling legislation in order to control toxic and hazardous materials. This organization is made up of a number of health care professionals throughout the State of Nevada. We do urge you to adopt legislation which will adequately control, and provide comprehensive control, for toxic and hazardous wastes.

Verne Rosse, Division of Environmental Protection of the Department of Conservation and Natural Resources: his testimony is attached as EXHIBIT E.

Mr. Jeffrey(?): You have heard the requests for exemptions to this bill, agriculture, mining, etc. Do you have a response to that?

Mr. Rosse: An amendment which I have given to Assemblyman Schofield covered those issues. We don't have any problem with them. We don't see any need to go any further than the federal program.

Unknown: What are the 11,000 tons that are sent out of state, waste?

Mr. Rosse: Principally, it is phosphoric acid, sledge from chemicals.

Mr. DuBois: In the packaging and transport of hazardous waste, interstate, how far has the Federal Government gone? Would that be the Department of Transportation, in developing truly effective regulations?

Mr. Rosse: The Department of Transportation has a thick book of regulations on packaging and transportation. Their problem is they don't have the staff to see that everyone follows it to the detail that's necessary. Fortunately, Nevada hasn't had many problems with hazardous chemical wastes from packaging, but we have had some. We reported it to the Federal Government and they have taken appropriate action, we feel.

Unknown: Is the Federal Government doing anything in the area of inspecting the packaging at the point of generation? Are they making any kind of spot inspection?

Mr. Rosse: Not similar to the radioactive program, no.

Don Baker, Environmental Manager in Southern Nevada: Generally, Timet (Titanium Metals) fully supports the bill and the amendments that have been talked about here today. It is about time that Nevada addressed this problem. The hazardous waste should definitely be separated from radioactive waste. They are two separate issues and should not be muddled together. If you do not pass this bill enabling the state to control the hazardous waste, the Feds will. We already have two disposal sites on our property. Under the federal interim status permit program, if Nevada does not have a program and the Feds continue, Nevada would not be able to come in and inspect or enforce any action against any site on private land. We would urge this committee to pass this act and get on with the program. Thank you.

Unknown: Where do you ship your hazardous waste?

Mr. Baker: We dispose on site. We have two interim hazardous status permitted sites, one for liquid, one for solid hazardous waste. The liquid site is the plastic lined, double lined ponds. The primary check system is ground water monitoring. The second check is tracer material. We use two tracer materials, nitrate and lithium metal. The third system is daily evaporation measurements any increase in the evaporation would indicate a leak to other ponds. So these three systems are two more systems than required by the federal law. The liquid disposal systems have only been in effect since 1977. The solid waste site, the Timet site, has been the same site since 1952.

Daryl Capurro, representing the Nevada Transport Association: I have to agree with the previous speakers who have indicated that it is much preferable for the State of Nevada to administer these programs in those areas where the Federal Government has given us the leeway, and a deep abiding feeling that Nevadans can solve their own problems much better than a pencil pusher in Washington, D.C. There are some problems with the particular legislation that I think will have to be addressed. I realize that this bulk of testimony will be looked at by a subcommittee. First of

Mr. Capurro continued:

all, it may not be possible to separate, or to completely combine, the responsibilities that you envision within this bill, in one agency. The reason I say that is that there are parallel regulations that have been adopted by the federal EPA and the federal Department of Transportation in which they work together on many of the provisions, which more properly belong in a counterpart agency within the State of Nevada. I am speaking, for instance, of routing. It should be a Department of Transportation function and not within the Conservation Department. The issuance of authority on an intrastate transportation basis is right now in the Public Service Commission, and we strongly believe it should be left there. The transportation of hazardous materials by common contract and by private carriers is governed by Department of Transportation regulations that have been adopted by the Nevada Public Service Commission. For those reasons, and I welcome to work with the legislative subcommittee on this, I do not believe it is possible to combine all of the functions, all of the regulations for the cradle to grave handling of this within one agency.

I have to agree with Mr. Marshall and some other speakers who indicated problems with various parts of the bill as set forth. On page 3, section 14, line 14 through 21, the regulations governing transportation, with regard to the Nevada Department of Transportation and the Nevada Public Service Commission, I believe is part of the federal DOT regulations but I am not certain. It is my belief that the manifest, which has to do with what that transporter has on his vehicle, was developed by federal DOT. That is an easy one to solve if that is the case, but it certainly should relate to the DOT regulations.

I would also have to agree with the removal of subsection 2, of section 15 on page 3, for the very reason that I again don't believe that one agency can become involved in the "who" part of transporting hazardous or nuclear waste particularly if you are talking about interstate transportation, that is, who hauls it is governed by the Interstate Commerce Commission.

On page 5, lines 27 through 29 I also have to agree with a couple of the previous speakers, principally Mr. Marshall, with regard to the reporting of each activity. I think that has to be very carefully looked at. If you are talking about each separate activity, I think you may very well have some problems with the reporting procedure there.

With respect to several other speakers mentioning it, on the bottom of page 6 and top of page 7, I do not believe that a temporary restraining order provision that is entirely different from any other temporary restraining order provision in this state or other states should be enacted in this law and that there should be the normal showing of cause.

I would close by saying again that we are in total support of the idea of the state of Nevada handling their own problems, and from that standpoint, we would support the intent of AB 196. 0223

Mr. Rackley(?): You mention on page 5, and I just want to clarify this, which line were you speaking of?

Mr. Capurro: I am referring to the subsection 2 of section 24, on line 27 where it refers to reporting each activity to the department in accordance with regulations adopted by the commission. First of all, the federal DOT guidelines and the public service guidelines may cover some of this area of activity. Second, I don't know exactly what an activity is, if it is moving it on site, an individual site, without having transported on the state highway system or on any other system. I am not opposed to reporting activities, but I'm not sure for each separate activity you should pick up the phone or write out a report on it. You may consider a monthly report of activity, or some such period reporting.

Kirby Stoddard, Chemical Engineer, retired: I am very much in favor of this bill. I have one comment. I am bothered about the definition and who decides what is a "hazardous waste." When I finished school some years ago, there were about 700,000 organic chemicals listed and in the order of 300,000 to 400,000 inorganic chemicals, all of which are hostile to the human body. I would suggest that this bill include the provision that the person who decides what is a hazardous waste be a chemist, or a chemical engineer, and supported by the advice and consent of a physician and possibly a botanist or biologist. That is all I have to say, thank you.

Victor Botts, Manager of McDermitt Mines, McDermitt, Nevada, President of the Nevada Mining Association, and Humboldt County Commissioner: The McDermitt mine is the largest mercury producer in the western hemisphere, producing half the U.S. annual consumption of mercury. Mercury is listed on the toxic list of hazardous materials. In reference to AB 196, I specifically have some concerns about page 4, line 23, section 19, not sure how it would be accomplished, but that liability insurance should be related to the potential damage, or potential liability of that operation. Certainly liability insurance is something not to be treated in a capricious or arbitrary manner; it represents a very heavy expense for most operations. Paragraph 2, again evidence of security in a form and amount which the department deems necessary; that security should be related specifically to the closing and maintenance costs of that waste disposal facility. It would be much better language, rather than again leaving it open based on some unknown reasoning or any other manner that someone chose to do to determine that amount. It really needs to be related to a specific estimated cost for closing the facility and any maintenance thereafter. It would be much better language.

Page 4, line 46, section 21, apparently has been addressed but there was a lot of problems with that section and I hope that there is an amendment to it. It would create no end of conflicts with other state laws and other problems. Again, in section 24, page 5, line 27, section 2, great difficulties as an operator with describing the reporting of each activity. That currently is undefined, and we need to define that better. Perhaps Mr. Capurro's suggestion of a monthly report would be satisfactory. But using

Mr. Botts continued:

the term "each activity" is a little vague and doesn't really address what may be going on at the waste disposal site.

Lastly, I would like to talk in general. There is a definite need to carry on the federal exemption for mine tailings and mine wastes as indicated by earlier speakers. That is very important, otherwise you are into a very definite overlap and conflict of various regulatory agencies which would make it almost impossible to operate. Thank you.

Glen Taylor, representing Basic Management: I think that everything I had to say has been amply covered by previous speakers.

Bob Warren, Executive Secretary to the Nevada Mining Association: I wanted to appear in tandem with Mr. Botts, the previous speaker representing the mining association. I should point out that I visited his mining property some time ago when I took this job and though he manages a facility that is considered a hazardous product, mercury, I noticed a couple of eagles flying in the area which were swooping down and drinking out of a pond. I asked about this and he said they were a part of their bald eagle family. They lived up in the headframe by the mine for a couple years. I noted they seemed not to be injured by the hazardous operation. We are told by many groups that reptiles and creatures of this nature won't come near a mining operation because it is a terrible hazardous thing for them. Mr. Botts said no, they seem to be thriving. Today I learned that that eaglet nursery has grown to six. I think that shows that hazardous waste can be managed very effectively by all parties including the mining industry.

I would like to speak on behalf of the amendment that was offered by Mr. Carter of Anaconda Corporation, that would exclude the mine waste. The amendment has been made available to Assemblyman Schofield who has indicated that he would accept it. I want to, for the record, indicate the mining industry's support of the amendment, in as much as it is already an exception at the federal level. Mr. Chairman and members of the committee, normally I would step boldly before this group as did Mr. Capurro, and say we firmly support this act and the state's primacy in managing hazardous waste, but events have transpired in the last few years that lead us to...(tape change)...rather than a position of support for state primacy. When I meet twice a year with other mining association directors in other states, we often discuss the various regulatory activities that are taking place at state and federal levels. Some say they're terribly sorry they ever supported the state program, as they now have two levels of administrative and regulatory activity with a substantial increase in cost. We are funding both state and federal government for activities. Others point out that the states have gone beyond the federal regulations in some instances, substantially beyond to the point of causing substantial injury to their particular interests.

As you all recall reading recently, the headline that came out of Montana when the Anaconda Company had to close its smelter there. It was the primary support to the entire community of Anaconda, some 1500 people. They will probably wind up shipping concentrates as far as Japan because the state enacted regulations that were excessive and beyond that which even the Federal Government required. That and a combination of low cost, or soft pricing, for copper dealt the fatal blow.

On the other hand, in Nevada, Kennicott Copper would be closed today if it were not for the firm and staunch support from the state Division of Environmental Protection under Ernie Gregory. He, working with the administration, the former Governor, and the present Governor, made sure that the Federal Government did not exercise any more authority than was absolutely permissible under the law. That is still in the courts. In the meantime, the mine has closed because of excessive regulatory activity at the federal level but the state defended the company in this instance.

There are other evidences of state overreach that I should bring to the attention of this committee, so you can consider whether you do want to automatically jump up and offer the state primacy in this area. You certainly may wish to do so. I suspect the majority of opinion would be in that favor. Within the mining industry, it would probably be the feeling of the majority, but the minority is becoming stronger.

During the last session, a bill was enacted which rewrote the state laws as they relate to water quality. The Legislature gave clear direction to the Division of Environmental Protection, as to what the intent of the Legislature was, but the Division in its regulations has, in our opinion, failed to recognize the intent of the Legislature, has overreached. Now there is another bill before this Legislature to cause the regulations to be written to follow the intent of the Legislature. These things are happening at this time.

Just one more example, also at the last session, the Department of Mining Industry cooperated very closely with the Department of Health to draft a bill that would control the mine tailings waste, as relates to uranium tail wastes, and to decommission and stabilize these wastes. We agreed to pay as much as a dollar per pound to care for these decommissioning activities up to a million dollars for each project, from production. But when the staff decided that was not adequate, in its regulatory discretion and it was supported by the State Board of Health, they decided that they wanted a portion of that money, \$250,000, up front before the mining company even gets into production, not from production, but just handed over before you even go into production. And they made it stick.

So we are finding evidence of overreach which this committee should be very concerned about. You should not automatically assume that state primacy is the answer, but I suspect that there is a strong support for it within the industry, stronger than there would be against it. I'm quite sure of that and wanted



Mr. Warren continued:

to bring that to your attention. The Board of Directors said this should be made a part of the record, so you would be aware of these happenings that will effect and should be considered in your deliberations. Thank you.

Unknown: Mr. Warren, the closing of the Anaconda Plant in Montana, did that relate to the disposal of hazardous waste, or did it relate to emissions, environmental?

Mr. Warren: Emissions, the sulphur and the emissions to the air that the state wished to control even more strictly than the Federal Government required which laid an additional cost that could not be recovered from the operation, which was not one of their high profit operations.

Unknown: It had nothing to do with waste disposal?

Mr. Warren: No, but it has to do with state primacy.

Charles D. Snow: I work for Pathfinder Mines, as a District Geologist in Reno, Nevada. I am also Chairman of the Exploration Geologists of Nevada, and a member of the Nevada Mining Association. We support the position of the Nevada Mining Association here today in opposition to AB 196. I would, however, add that it does not appear sufficient consideration has been made to inform the people of Nevada that by duplicating existing federal rules and regulations, their state government is imposing additional costs on their pocketbook. These costs should be addressed by an economic impact statement when enabling legislation is before the Legislature. The cost assessment should also be added to announcements of public hearings on government actions affecting the people. People should be informed of all costs of state and county governments that accompanies new legislation or rules and regulations. Peoples' concern for cost affecting their lives is real, whether these costs are for utilities or whether they are for government. Recent action by the people and their demonstrations at the rate hearings for Sierra Pacific or the Proposition 6 that was on the ballot last fall are evidences of these concerns. There is not enough time here today to trace the increased costs passed on to people by new legislation. That increases the costs on businesses. These costs are hidden and passed on.

A little example might be, for example, bentonite and how it gets passed on to the people in Nevada. Bentonite is mined here in the state, most of it is shipped out of the state to other people, it is processed out of state but any regulations that we apply to it or any costs in production we apply to it are passed on to us because this material is used as drilling mud or in drilling muds and we pay for it at the gas pump and at the hot water tap.

Before accepting the position of District Geologist in Reno, I worked in Wyoming for legislation on similar bills that culminated in the Environmental Quality Act of 1973. It might be interesting to look at how the costs grew for that particular department after

Mr. Snow continued:

it was built in 1973. I mention also that the Department of Environmental Quality and the Environmental Quality Act of 1973 was the result of putting together piecemeal legislation that had earlier been promulgated in Wyoming beginning as early as 1963 through 1969. In 1973, the Environmental Quality Act effectively made a super agency to handle all areas. In other words, the Wyoming Environmental Quality Act of 1973 was the enabling legislation, and by 1974, rules and regulations were in place to have a functioning department. This Department of Environmental Quality in 1974 was staffed by about ten people with a modest budget of \$500,000. By 1977, the total appropriations for the department had increased to \$2,153,790. The distribution of these funds for the various environmental areas were water 41%, land 22%, air 23%, administration 11%, and solid waste 3%. The office space requirements increased to 25,595 square feet in 1975. Because of the limited state facilities, the department started renting available spaces in Cheyenne. A new office building is now being constructed at a projected cost of \$40 to \$60 million to provide a 388,000 square foot office space with underground parking facilities. This added office space was needed to house the increased size of the Department of Environmental Quality and related governmental agencies. In 1979, the biennial budget for the Department of Environmental Quality was \$8,500,000 or \$4,250,000 per year, and the department was authorized 122 full time positions; 105 of which were filled. The budget for the next two years is \$9,215,000 and the department is authorized 137 employees.

Personnel and cost increases also incur in other departments of the government. These include even an additional attorney in the Attorney General's office; the Governor's office added two people; additional costs of 2 to 10% were incurred by every agency or state government office including the State Engineer; the Department of Economic Planning and Development; the State Insurance Commission due to bonding provisions of the permitting process. Also affected were Public Lands, Game and Fish Commission, Oil and Gas Commission, Energy Conservation Office, Industrial, Highway Department, especially in regard to obtaining sand and gravel and related highway construction needs. The Land Administration and Legislative Services office, the Board of Mines, the Mine Inspector, Department of OSHA, and the Recreation Commission and Travel Commission were also affected. The growth of regulating agencies in Wyoming was added in as ever escalating costs in production and taxes including a 1 1/2% tax as a capital building fund to build the new facilities in Cheyenne.

Since the hazardous waste regulations of the Federal Government are still subject to some provisions, and enforcement still being implemented, it appears that Nevada's adoption of AB 196 is a premature and costly duplication of Federal Government regulations. I see here today the duplication of what I saw in Wyoming in 1969. We here too are building, I think, a new cost overlay that is unneeded. Thank you.

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Frank Luchetti, Environmental Specialist for Sierra Pacific Power Company in Reno: Not only do we generate power, but we are also the water purveyor in the Truckee Meadows. We deal with hazardous wastes on a day-to-day basis. I have a statement I would like to summarize. (Statement attached as EXHIBIT F)

We concur with the state's hazardous waste program. We have to deal with the Federal Government, the Federal EPA, with polycor-natedbyphenals. We don't get the answers that we are looking for. The Department of Environmental Protection has assisted us, even though it is not their jurisdiction. They have assisted us and other utilities in getting these answers from San Francisco from the Department of Transportation and the Federal Environmental Protection Agency.

Those speakers before me have spoken of the exclusions to the definition of hazardous waste. My testimony also speaks to this. These exclusions are contained in the Federal Register, Volume 45, No. 98, Monday, May 19, 1980, Part 261.4. We strongly recommend that these exclusions also be included in your definition. We suggest that section 21 be deleted. The section suggests that the state assume ownership of all hazardous waste disposal facilities. The facility owner then must pay a fee annually to the state to make the property self supporting. Currently, there is federal super fund legislation money which is available for hazardous waste spill and hazardous waste disposal clean up. Section 21 would be a duplication of this super fund money.

Owners of hazardous waste disposal facilities are reluctant to deed disposal areas to state or local governments. When sites are deeded to local governments, owners can no longer control the activities or uses of the site but are held legally responsible for the decisions. This is particularly true after a site is closed. An example is the Hooker Chemical Company's operation at Love Canal.

Another point I would like to make is the hazardous waste program delegation to the state is unlike other federal environmental programs. It is not necessary that the state hazardous waste program duplicate federal regulations word for word. State programs must only demonstrate "equivalency" to federal programs.

Chairman Jeffrey: This closes the hearing on AB 196 and I have to apologize. We did have AB 211 scheduled but it looks like we're going to run considerably over the time that we are going to be able to keep the committee here. I've got to go to another hearing at 5:00. We will reschedule AB 211 and get into the other Assembly Bills. We are going to appoint a subcommittee of Mr. Schofield as chairman, Mr. Redelsperger, and Mr. Kovacs on all of these hazardous waste bills. The ones that we heard today as well as AB 89, one that was heard some time ago. The times of the meetings of that subcommittee will also be posted, and we certainly welcome the input from anyone concerned about those bills when the time comes. As far as the remaining Assembly Bills dealing with hazardous waste are concerned, probably what we ought to do is, if there are specific provisions within any bill that you would

Chairman Jeffrey continued:

like to address yourself to, then I think we will permit that. But the scope of the bills are so similar I think it would be well to take general testimony that would apply to all of them and if there is specific provisions in one of the bills that you want to address yourselves to, feel free to do that. What we'll do undoubtedly, when these bills go into subcommittee, is combine provisions of various bills and come up with one bill. Even though we have the three listed we'll be, I think in concept, dealing with one piece of legislation at the end. So with that we will get started with all three of those bills.

AB 200 Prohibits licensing of persons to dispose of or operate sites for disposal of radioactive or other hazardous waste on state-owned land.

AB 256 Prohibits transport of radioactive waste through Nevada or its disposal within if generated outside the state.

AB 300 Limits disposal of radioactive or hazardous chemical waste to that generated in Nevada.

Jim Schofield, Assembly District 12, Clark County: To begin with, I will be talking on AB 200. I realize you want to keep the bills together overall because of what you mentioned, but the reason for submitting a bill in order to close sites for the disposal of radioactive, rather hazardous, wastes on state-owned land and prohibiting the licensing of persons to dispose, comes about with the problems that we have been hit with recently, not only in the State of Nevada, but other states and for the protection and health and safety of the citizens of the State of Nevada. I think that Nevada certainly should not be the dumping ground of the west for radioactive and hazardous chemical waste. Initially the proposing of this bill was for that very protection. I feel that it is quite necessary that we take a look at that particular problem in order to generate additional input regarding the dump site and the problems we have had at the dump site relative to the leaking containers, the most recent problem concerning the BKK. This is part of the reason for the hazardous waste regulation bill that we just heard testimony on. The main thing that we want to try to do is show justifiable cause to try to prohibit this dumping. If it is justifiable to prohibit this particular measure, then I think we should approach that. I think we owe it to ourselves; we as legislators, owe to the people we represent in the State of Nevada, the citizens of the state, to protect their health and safety. The problem we are all aware of concerning chemical dumps really being ticking time bombs. I think that the problem involved there could probably be justified on one side, I'm sure there is pro and con in the feeling of individuals throughout the state, on whether or not we should actually continue and be the dumping ground of the west. This particular time along those lines, there is a compact that is trying to be put together by the Western States Governors' Conference to try to set up a regional depository for both the hazardous waste and these nuclear and low level radioactive wastes. I did want to point out to the committee concerning public law 96573 that was passed

(Committee Minutes)

Mr. Schofield continued:

in December of 1980, which requires that each state is responsible for providing for the availability of capacity, either within or outside the state, for the disposal of low level radioactive waste generated within its borders except for waste generated as a result of defense activities of the secretary or federal research and development activities, the low level radioactive waste can be safely and efficiently managed on a regional basis.

Perhaps this is the way to look at it. This is one of the reasons I feel that this is such an all important factor in our lives today, speaking on the era that we are entering into concerning the hazard and chemical waste. Like the problem that occurred just recently in addition to some of the other problems that we have had throughout this country, if there is a problem and we can justify, I don't want to look back nor do I want my grandchildren to look back and say, "My gosh, my dad was representing the people of the State of Nevada 20 years ago, 40 years ago." I just don't want that to ever occur if we in fact have an opportunity to do one thing or another. Either justify what we are doing or at least control our destiny by the powers and authorities we have as the Legislature. I think that it is all important that we take a very quick look, as you mentioned before, concerning AB 256 and AB 300, which would in fact prohibit the transportation of wastes of that generated outside the State of Nevada. This will also be looked into in the subcommittee you mentioned, Mr. Chairman, and we owe it to ourselves to take a look at all aspects, every avenue of approach that we can. Hopefully we will work out and pound out some good form of controlled regulation, not in deference to the testimony we heard prior to this about why we should not duplicate the federal regulations which pertain to all three of these bills before the committee. I think that it is very important that we do in fact say this is what we are going to do in the state. We don't want to sit back here in this state and have the federal regulations dictate totally to us. They dictate to us enough. What we want to do is at least meet it, and if there is a problem with it, and if that is what we have to do as state, we have to say this is incorrect. They are not all encompassingly right in their particular regulations. I am sure there are flaws. They are human beings like we are. There are flaws in some of our laws as we have found out in various measures that we have had to look at while here in the Legislature. Consequently, because the Feds say this is what it is, that isn't necessarily that that is the correct way. I feel that it is incumbent on we as Legislators to take a look at these measures and try to come out with something that we can live with, that we can be proud of and that we can protect the health and safety of the citizens of the State of Nevada.

Mr. Redelsperger: Jim, you mentioned BKK in the same criteria as the Beatty Dump site. Two completely different things.

Mr. Schofield: I understand that. I was only mentioning that as a problem. There might also be a problem in other areas of the state that we are not aware of. You might recall; that I don't

Mr. Schofield continued:

think that anybody realized, I didn't know, and I was within a few miles of that site when we all took the trip down to the Beatty Dump Site. I wasn't even aware of BKK being there. This particular thing came out in the paper and I thought to myself where else might this be going on in our state. We didn't have any regulations controlling it as far as the state was concerned, when the Governor probed this. We do not have any regulations right now. They are complying with the federal regulations. It is no offense. I'm not picking on BKK or anyone else. I'm looking at it in a broad scope. Where in this state might somebody be dumping some tremendous toxic chemicals, down mine shafts or anywhere. You know all over this whole country today, they are having the problem of where are we going to put this? Do we incinerate it down south? Do we dump it up in Washington? Do we take it to Oregon? Where are we going to take these hazardous wastes? Where are we going to take these chemicals? Some of them don't even know how long their half life would be, or they don't know how long, how really horrendous a problem that they could cause. No matter what or who or where, and I'm not putting my finger anywhere, someone might be dumping something down these mine shafts. I don't care whether it is granite, tungsten, or whatever, they may be dumping it down there. With the arid situation the State of Nevada has at this time concerning the underground water, and that is our life's blood in Nevada, although we are the most arid state in the west, if something were to occur to actually contaminate the water resources, the underground aquifers, there would be nothing we could do about it, not one thing and the possibility of that going any which direction as far as the water traveling on our underground aquifers today is scary. We could have quite a problem. We could ruin and contaminate the water resources in the State of Nevada for thousands of years to come, it is very possible. That is what scares me.

Mr. Redelsperger: I agree with you, I think this is why we should find some way to dispose of this in an orderly fashion. If we do close the site, what do you feel we are going to be able to do with this material you are concerned about being thrown down mine shafts?

Mr. Schofield: This is one of the reasons to bring out additional input, generate input from people, to find out how we can enforce, how we can regulate in the State of Nevada for the protection of the health and safety for the citizens of the state.

Mr. Redelsperger: 196 goes a long way toward what you are talking about.

Mr. Schofield: Yes, this is the reason for all three bills, and we will be hearing them in the subcommittee. These are just a few of the PCB storage, Beatty problem, the problem of what are we going to do if, in fact, something were to occur concerning the contamination of our underground water resources. That is the thing I'm concerned about. I'm concerned about that for the people of this state, for myself, and I think it is incumbent upon us to do everything in our power to try to control it or enforce it or at least get a handle on what is happening.

Chairman Jeffrey: AB 200 is quite a development and a position we have never taken in the past. When I took it upon myself to talk to Will Crocket in regards to this, and I have several questions I want to ask him, but right now I was wondering if I could ask him to come up and clarify the constitutionality of this bill. Will, as we had discussed earlier, there are some other things we want to get into, but at this moment all I wanted to do was have somebody go on record as advising us to the constitutionality of this bill.

Will Crocket, Deputy Legislative Counsel: Mr. Chairman, two possible ways to proceed. We believe it would be unconstitutional to pass legislation addressed at the lease itself because that would impair the constitutional provisions against the impairment of contract. On the other hand a state may not abridge its own police powers. The Legislature cannot abridge its own police powers in the future. And many cases have held that a grant of a license is made with an implied reservation of the right to impose reasonable police power regulations later on, to the extent of revoking a license. It is our opinion that AB 200 would be constitutional.

Chairman Jeffrey: As far as the other bills are concerned that deal with this subject, 256 and 300, have you done any research in regard to those bills?

Mr. Crocket: Yes, I have. AB 256, in the respect that it would prohibit high level waste that would be preempted by federal law to the extent that it would proport to regulate low level federal waste. That would be banned by the supremacy clause. It is proposing to prohibit the transport through the state of low level waste and would be a burden to interstate commerce. Also the prohibition of accepting waste from outside the state would be an embargo against interstate commerce, so in several respects this bill is unconstitutional, in our opinion.

Chairman Jeffrey: So in your opinion, AB 200 is constitutional and AB 256 and AB 300 are not. Is that correct?

Mr. Crocket: This is correct.

Mr. Redelsperger(?): What about AB 300? It is any person who operates outside of Nevada and this is on low level radioactive waste? I understand that the Federal Government and the Department of Energy also ship low level nuclear waste into this state and dispose of it at the Mercury test site.

Mr. Crocket: If that were done by federal agencies under federal law, proposed state regulation of that would be contrary to the supremacy clause of the Constitution.

Mr. Schofield: If I understood you correctly, you said that would be contrary to the Constitution for the federal?

Mr. Crocket: Those activities by the Federal Government are permitted under the supremacy clause under the Constitution and the state could not prohibit them, or regulate them.

(Committee Minutes)

Mr. DuBois: On AB 256, which you say is unconstitutional, I'm not talking about interstate traffic moving through the state. We are talking about traffic in the state and specifically being disposed of. The manner in which that hazardous waste would be disposed of in the state, isn't that a little different condition?

Mr. Crocket: But the bill in subsection 2 says "No federal, state or local governmental agency or other person outside the State of Nevada may transport or cause to be transported through Nevada or into Nevada for disposal."

Unknown: Is it "through Nevada" that makes it unconstitutional?

Mr. Crocket: There is a burden on interstate commerce because it discriminates against people outside the state. It allows transportation of that material within the state by people within the state but not by people outside the state through the state. That in itself would be a burden on interstate commerce. Also, this area is regulated by the Federal Government, the Department of Transportation regulations and so forth. That would be in addition to the burden on commerce.

Chairman Jeffrey: Is there any testimony at this time in favor of this package of bills? I noticed most of the people that registered were registered in opposition.

Brian Greenspun, from Las Vegas: I am here in a number of capacities. I'm here as Executive Editor of the Las Vegas Sun, Publisher of the North Las Vegas Sun, as a father, as a brother, as a son, as an individual who lives in the southern part of the state who perhaps is a bit more aware of what is going on down there in terms of the passage through and around the City of Las Vegas, the County of Clark, of nuclear laden trucks on their way to Beatty. Incidentally, Mr. Chairman, I'm here to testify on all three bills so if I go over the ten minute limit, I hope you will forgive me.

I wasn't planning on discussing the constitutional merits of the bill. I have to give you a different answer and just hope that you seek counsel elsewhere. I got a hold of the minutes of the meeting of the Senate Committee on Human Resources in which Mr. Crocket's opinion letter is attached, and he also attached the decision in the City of Philadelphia vs New Jersey case, which he is relying on very heavily in his decision. My only suggestion is that he totally misread the case. If I may very briefly read about three paragraphs from various parts of the opinion, I'm sure he has made it available to all of you. What happened in the New Jersey and Philadelphia case is New Jersey tried to prohibit out of state shippers of solid waste. They have these huge land fills in New Jersey and the issue was whether or not New Jersey could limit the importation into the state of solid waste from New York, Philadelphia and various states around New Jersey, so that the land fills which were becoming increasingly limited in the amount of available fill, could be used only for the waste that was generated in New Jersey. The Supreme Court in a 7-2 decision said that is "against the interstate commerce clause because what you are doing is putting a burden on the other states



Mr. Greenspun continued:

in interstate commerce." Reading from the Supreme Court report, "It is true that certain quarantine laws have not been considered forbidden protection measures even though they were directed against out of state commerce." You go to California a lot, and I assume when you pass the border, they check your car for fruits and nuts and they take them from you. You can't take them into California unless you came from Nevada. If you came from Florida, you couldn't take it in. That is a quarantine law. It has been upheld many, many times. Those quarantine laws ban the importation of articles such as diseased livestock, that require destruction as soon as possible before their very movement risks contagion and other evils. Those laws, thus, did not discriminate against interstate commerce as such, but simply prevented traffic in noxious articles, whatever their origin. And that is really the distinguishing factor in that case.

Now we go to Mr. Crocket's letter of February 5th to Senator Hernstadt where he said, "A Nevada ban on the disposal of radioactive waste which originates outside the state would have to be based on the increased risk to public health inherent in the transport of that waste over the state's highways." That I submit is exactly the issue before you. Such a showing would be factually difficult because the risk to health of properly packaged low level radioactive waste is minimal. Here he has jumped from a legal opinion to an opinion of a nuclear physicist, but is is contrary to all the testimony I have heard during ECO hearings. At least from reputed experts who testified on one side, admittedly you can get experts to testify on just about anything these days. But there is clear evidence of leaking shipments that go to Beatty all the time. And that is really what you have to stop. Those shipments coming from out of state that are leaking. They go right down Rancho Road. Those of you who live in Las Vegas know where Rancho Road is, and I brought a picture in case you don't know, here is a picture of a truck called "Tri State Motor Transit Company" marked clearly "radioactive" traveling down Rancho Road. Unfortunately, I don't know the date but it was some time this last year. We took a picture of it but this is what you are trying to prevent. These trucks come through and I'm not saying all of them are leaking, but many of them are. A great number are and we don't know what they are leaking. By the time you get to them, they may have dissipated, they may have repacked them, who knows.

I have here a list that was prepared March 12th which is a chronology of incidents involving radioactive waste shipments to the Beatty site. In September 18, 1980, I think there were 23...(tape change)...If the driver is going in to get something to eat, where do they park the truck? At cafes where food was being served or other people pull their cars up. This is what I'm getting at, and I think you can clearly distinguish that Philadelphia case. Based on the fact that if radioactive waste is less dangerous than diseased cattle, then I guess we are all wasting a lot of time concerning ourselves with it. The answer clearly is that it lasts longer, maybe 10,000 years longer sometimes.

I would urge you to get another opinion. There are plenty available through the Attorney General. It is a little difficult, especially in light of what happened yesterday in Washington, D.C., to talk about danger to the public. We say yesterday what the immediacy of what can happen with a gun and a bullet. It is difficult to talk about what can happen five or ten or fifteen years down the road in light of that kind of danger we face everyday. I think that is the duty that is incumbent upon the Legislature this year, to face that problem. What are we doing?

Assemblyman Schofield is very concerned about the water. He should be, and you all should be. There are bombs going off every month over at the test site. Suppose one of them goes off and it is a little strong. There are a lot of aquifers around the Beatty Dump Site. There is a tremor area, although you can get experts to dispute it. Certainly the buildings rock pretty good in Las Vegas and that is 60 or 70 miles away. You can guess what happens at Beatty. I know they come by and throw everybody out of the mines before a blast. Something is happening to the ground. It doesn't take a genius to realize that when they take liquid waste, liquid chemical waste, leaking waste that comes in, the radioactive variety, and put them together in nearby trenches and there is a shakeup of the ground, eventually that stuff is going to get down to the water table, however deep it is. That is something you have to consider. I think the state should regulate the waste problem. The thought of leaving it to the Federal Government is kind of scary.

An example that I learned today, the Nuclear Regulatory Commission, on March 16th decided, prior to March 16th, all the cattle and laboratory animals that were used for medical research that were radioactive had to be disposed of in radioactive dump sites because they were dangerous. So too the paraphernalia used in that research. The Nuclear Regulatory Commission, from what I understand, said that no longer will that stuff have to be shipped to be buried at nuclear dump sites, because they are no longer a problem and they are no longer unsafe. Two reasons were advanced: (1) the size of the carcasses and the amount, the sheer volume, of room that would be saved in existing land fills would allow the land fills to last maybe ten years longer because they don't have to put that kind of material in it, and (2) it would avoid the cost and aggravation of the hospitals of the transportation. So this is the kind of head-in-the-sand thinking that the Nuclear Regulatory Commission, and I'm sure the other federal agencies, are involved in. What was unsafe yesterday is now safe because it is aggravating, it costs too much, and it takes up too much room. I submit that's not the kind of thinking that has to come out of this Legislature. It doesn't make sense at all. I am in support of closing the dump site.

Obviously we can't take the provincial attitude that we have to take care of our own waste, just as California has to take care of its waste, Michigan has to take care of its waste. In that regard, here is a story from the Wall Street Journal written by Sam Allis. The headline is "State Grapple with Mandate to Dispose of Atomic Waste." The issue is the regional dump site plan that

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was discussed, that was passed by the Federal Government at the end of 1980. Just a couple of comments. He says California has a problem all its own, in terms of getting together on a regional basis. The 800 pound gorilla syndrome by an expert: The state produces more low level waste than all the other western states combined. Yet it is resisting any disposal facility within its borders. Under those terms no one wants California in a compact. Idaho's Mr. Costello says of California and its stand on a disposal, "It's a center of gravity and it should acknowledge this. It would be uneconomical and politically unacceptable to the smaller states for California not to take it." In other words, their own. Yet they are more than willing to send it over here to Nevada. Just as all the other states are more than willing to send it to Nevada now because we have not said no to them. As long as there is a place that will take it, they are going to drag their feet forever in terms of finding other dump sites and coming up with the proper kind of regulations. Sure, send it out to Nevada.

There are a few things I want to bring to your attention. Someone mentioned PCB, Mr. Winters I believe from BKK. We had a story, and Assemblyman Schofield pointed it out about the rush to Beatty before March 1st of this year because of the federal law that said this stuff is so dangerous you have to send it to Arkansas to be incinerated in high temperature incinerators. Some 200,000 gallons of PCB were shipped over a period of a week to Beatty to avoid the high cost of sending it to Arkansas to be disposed of properly. That is the attitude of the private commercial interests toward Nevada, "Hey, it costs more to send it to Arkansas. We know it is unsafe, the government has said it is unsafe, everyone said it was unsafe, but let's get it in there before the deadline and save ourselves a few dollars."

The one thing that Mr. Winters said, and I hope it did not escape you, he said they were going to apply soon for a high temperature incinerator at Beatty. That will give us one in the west and all that PCB will be coming back to Nevada. It is too expensive right now to go to Arkansas. I would not like to see that in Nevada. I hope you would not.

Three things from the Sun: this was printed on October, 1979, an editorial prior to the initial closure of the dump site. I think it sets forth the kind of philosophy that I would like to leave with the Legislature. I'll read some from the editorial entitled, "Close nuclear dump site now. Mass genocide in Nevada." When mass murders and cremations were being carried out in Germany and East Europe, 95% of the population pleaded total ignorance of the monstrous events that were taking place. 3% said they merely were following orders like good soldiers and 1% in the villages of the locations of the executions said it was helpful to the economy. It created jobs for doctors and scientists, and started a new industry, making lamp shades from the skins of human beings. Some years back this editor wrote a front page editorial suggesting a moratorium on the nuclear detonations at the test site until we learned what happened in the sudden deaths of

Mr. Greenspun continued:

thousands of sheep in southern Utah without warning or discernable cause. I questioned then whether radiation or other contaminants could have been the cause. I was bombarded with protests that I was jeopardizing some of the jobs at the test site and that I was hurting the economy of southern Nevada. My doubts were sincere and credible because at the time I had access to top scientific and nuclear physics thinking which evidenced real concern about contamination of the atmosphere and underground water supplies.

It is at least a decade later that a bill has been introduced by Senators Edward Kennedy and Orin Hatch calling for federal compensation to cancer victims who lived down wind from the test site during these explosions. Referring to the victims in five Nevada counties, seventeen Utah areas and residents of Arizona, the Senators say, "They were victimized without their knowledge or consent within their own farms, homes and communities." The bill states, "Federal negligence combined with ignorance about the enormity of radiation affects with the twin killer in question." The compensation would include ranchers who lost 17,000 sheep and untold numbers of cattle. Some inhabitants could never be compensated because there is no way of assessing the enumeration for children who contracted leukemia or cancer from drinking milk from contaminated dairy farms during those years. What are the costs and torment and heartache for parents who watch precious little ones waste away and die in the pain that these dread diseases bring. With hindsight and additional knowledge, we cannot stand by silently when the same conditions exists and the poisoning of the atmosphere and underground water supply still continues. Up to six months of investigations into the Three Mile Island nuclear disaster, the latest reports say there are still no adequate reasons for the incident or adequate help to ascertain the effects or remedies that will solve the problems of future disasters. Nuclear power and waste storage are still in the experimental and developmental stage. It functions in a trial and error vacuum with questionable expertise on both sides of the issue. If there is error, far better to give the benefit of any doubt to the safety and health of citizens than to err on the side of polluters and profit making companies.

The lawsuit filed by the Sun to enjoin and restrain a nuclear engineering company from further dumping of waste at the Beatty Dump Site stated, "One of the cherished values of human existence is to be free to seek and find a secure environment within which to enjoy the pursuits of life." NECO, through its negligent and reckless activity and through the mere presence of its Nevada operation, has deprived us of the opportunity to enjoy a secure and healthy environment for ourselves and for our children.

The same company that operates the Beatty Dump Site has been shut down in other states by emergency actions of the state and judicial authorities for identical abuses and hazards to the health and safety of the citizens of those states. Governor Robert List does not have to go through lengthy hearings to take action. He can shut them down immediately and hold hearings later. Make NECO

Mr. Greenspun continued:

prove that its operation is safe and does not present a clear and present danger to health. If the company can justify its right to operate and prove the safety of the operation beyond any reasonable doubt, the Governor can then give consideration to reopening the site.

As the Nevada State Journal stated in a recent editorial, "But Nevadans have paid too high a price from radiation already. They must have solid guarantees that their health will not be further endangered. Until Federal Government shakes itself awake and begins to require safety guarantees, Nevada should say "no" to nuclear waste." With each day that passes, the perils proliferate and the only promise to present/future generations of Nevada is genocide. If the Governor is more concerned with the rights of nuclear engineering than the rights of the people to live in a safe and secure environment, he does not belong in the office of Governor. He should act now or we should run him out of office. Now that was before he closed it. He closed it and we all know the history of what happened. I'm not going to read the others. They are available if you want them. They basically take the same tenor. Some have more factual information. I wrote one March 15, 1981, after the Senate in their committee, turned down a similar bill to AB 300, or AB 200, setting forth a lot of the same reasons I mentioned, one that they should get new counsel. But the real issue is are you as a Legislature going to continue to allow private enterprise, and I distinguish between the Federal Government shippers, to do this.

All of us who are in private enterprise, at one time or other, look at the cost of something, and look at another way of doing it, and sometime you find an easier way to do it. There is no room for the easier way when you are shipping radioactive waste. I'll tell you one example, the easier way ended last week with a shipment to Beatty that had 8 barrels that were in violation of the rules and regulations and three of them were leaking radiation. So they packed back on the rental truck at Beatty. They had already come through Las Vegas on the way to Beatty. They were packed back on the rental truck, shipped back down to Beatty, all the way down to a location near the Showboat Hotel. Whether they came down Fremont Street, Rancho Road, or Charleston Blvd., or stayed on the freeway til they had to take Bruce to go over, I don't know. But then they unloaded the truck, took those barrels, put them on a pickup truck, and supposedly changed the radiation markers from 2 and 3 levels, which is more dangerous, to a white 1 sticker, and God knows where they went. We heard they went to California and then back to Texas. How they got there, when they left, who they passed, who were exposed to it, we don't know. The question is not how much radiation was there at the time. What could have been in those barrels; and, really, the callous attitude of these private enterprise people. The callousness. They didn't respect at all the people they drove near, the people who they stopped near, the people who were involved when they transferred the barrels. There was no respect at all. I think the only place we are going to get respect is hopefully from the Legislature which will say that radioactive waste is dangerous.

(Committee Minutes)

Chairman Jeffrey: We are going to be losing our quorum pretty soon but if the people that are able to stay, will stay, I would like to take the testimony of the people that took the time to come here. I realize it is contrary to the rules but I don't see a problem with it since we are going to put it in subcommittee anyway. If there are people who have come to testify I want to take the testimony and will have it on record for the subcommittee at a later time. We will continue on, whether we maintain a quorum or not.

Daisy Talvitie, League of Women Voters of Nevada: I do have some questions of constitutionality on a couple of the bills I was going to ask to be investigated, particularly when it comes to any transport through the state. Every opinion I have read and heard, and I have examined a number of them, does say that the Supreme Court has ruled that you cannot prohibit something from being transported through the state. I don't think it is unconstitutional for you to say you are not going to provide a site. That is a different matter. I have with me a reference book, "State Decisions Guide for Hazardous Waste Management." It does discuss transportation problems to some degree and what a state can do and should consider doing even though it may not be required by the Federal Government. The League of Women Voters feels that the real problems that we have to address in both hazardous and radioactive waste is safety in transport, proper labeling, proper packaging. There are a number of things you can do and certainly be constitutional, as has been demonstrated. It is a matter of whether you want to spend the money to do it. You can always stop something at the border and inspect. That is done in a lot of states. If you have adequate justification for doing it. They do it for weight but we use the mobile system of checking weight rather than stopping at the border. You definitely should require licensing. There are certain provisions that should be in licensing. You should have operator training, tariffs, some according to this guideline book; it says you can look at routing, insurance coverage, handling of the waste. You could go so far as to require registration of all waste transportation and handling equipment, you could require everyone that transports in this state to have a state license in this state with specific requirements as to what they have to meet in order to be a transporter here. We think we could also do such things as training. Massachusetts is training all peace officers and health officers to make inspections, to stop, etc. While the primacy is with the state agency, they act as agents of the state. The general philosophy, particularly the one bill that calls for the canceling of all licensing; first, it demonstrates the confusions in state law because it refers to the Health Department revoking all licenses. In 1977 certain licenses concerning hazardous chemical waste were transferred to Conservation and Natural Resources. If you carry that philosophy, it goes beyond the summary of the bill. The bill directs itself to state-owned land, that is in the summary, but the bill itself says all licensees. If we do all licensees and all permits to handle, to cite hazardous waste, what about the industries that dispose on site that now have a permit issued by DEP as a means of preventing its getting into our water? You automatically will be canceling it. We have to

Ms. Talvitie continued:

have some sites for some of these wastes. You would put industry out of business if you did not allow any licenses for chemical waste.

In addressing hazardous waste rather than radioactive, we are a state with vast areas of unpopulated land. We are generating some of our own hazardous waste; some radioactive. There are many different hazardous waste types. Each has to have a specialized type of approach to disposal. Some of it can be incinerated, and that is the only way you can get rid of it. Some of it has to be neutralized; some can be farmed into the ground and the soil itself neutralizes it. It all has to be designed, and it requires many types of facilities. If the state does not let anybody bring anything in, what is going to happen to those things we are sending to other states, will they backlash in the same respect. About PCB, we have thousands of capacitors and transformers on utility poles. They are filtered PCB's because they were in use for years legally and they have not all been replaced. When they are replaced, they are going to have to be disposed of. The liquid is supposed to be incinerated.

Are we going to say we will accept absolutely nothing from another state that takes something of ours? I don't think we can afford to go to that extreme. We have to be sensible and I think AB 196 gives us a very good handle on it. We are going to have additional sites. People who generate smaller amounts in northern Nevada have to travel all the way to Beatty. It is more likely to be dumped on the desert, much closer. Do you want those to be state owned? What kinds of waste will be handled? Can we develop an adequate program, and adequate review of the transportation, packaging, and handling to make it safe?

Mr. Schofield: There is another bill, AB 89 that I wanted to be sure Daisy was aware of. For everybody concerned, hopefully, the Chairman and the committee will recommend that AB 89 also go in the subcommittee because they are all related bills. If anybody has any input for AB 89, along with these others, I would appreciate it.

Mr. Redelsperger: SB 86 is also on its way to us. They address themselves to the packaging, the handling, the shipping, and the major problems Mr. Greenspun was addressing.

Steve Carpenter, U.S. Ecology Site Manager: I will avail myself to questioning. In the past 2 1/2 years I have been through several licensure hearings before the State Board of Health. As a result of the two hearings, 1979 and 1980, it was the statements of finding of facts and conclusions at law which are public record, that I encourage all the committee members to review. It found that no health danger to the public exists at the facility in Beatty. It was recognized that there have been problems with improperly packaged and transported wastes. This was addressed in a legislative subcommittee year and the year before. ~~3241~~ conclusion of their investigation, which included a visit to the

Mr. Carpenter continued:

site, they recommended that no action be taken regards closure of the nuclear facility. Assemblyman Schofield made reference to federal legislation which in effect permits state compacts but not prior to January 1, 1986. There have been moves to establish compacts. I would like to have Ms. Buehler address that later. The compacts are taking on a reciprocity nature. I can see where we do not dispose of most of the hazardous waste generated within the State of Nevada. It goes primarily to California. Most of the low radioactive that comes into Nevada from the southwest, what we would envision as being the southwest compact, comes from California. You can envision a trade off of some sort there. Furthermore the legislation that you presented today with the exception of the transportation does not address the more than three times the annual volume of low level waste received at the Nevada test site at Mercury every year. They receive three times the volume every year that we receive at Beatty. That does not take into consideration the high level waste. In the findings of facts and the conclusions of law from the two hearings before the State Board of Health, there was much testimony presented both pro and con, as to the suitability of the site. I would refer any questions on that to Dr. Jim Grant who is here from Law Engineering and Testing Company.

Assemblyman Kovacs: You mentioned that we have not had any radioactive waste regulations that have not been conformed with. I was given this March 12, 1981, which gives us a chronological order of incidents involving radioactive waste shipments to the Beatty Dump Site. We go from September 18, 1980, up to March 11, 1981. That last shipment of March 11th, there were five violations of DOT regulations and six violations of the state regulations governing the use of the site for disposal of radioactive waste. Now my concern is the transportation and the leakage we are getting in this transportation. February 23rd, we had one truck, one container leaking. A few days before that on January 26th, there were ten violations of the state regulations governing the use of the site. You being the principal leasee site, how do you justify those? How do we correct those? Mr. Carpenter, you said I said that we don't have any problems. I don't recall saying that. I stated that the State Board of Health found that we posed no health hazard to the public. The incidences that you refer to, I'm not sure, I haven't seen the letter you have, what pertinent data is contained therein concerning those several violations? Those violations are not citations of U.S. Ecology or the dump site operators. They are citations of the users of the site, the shippers and transporters. Are you responsible for disposal of the waste?

Mr. Carpenter: We are responsible for the disposal of the waste. We are not responsible for the packaging and transportation. There is no legal precedent that has been set whereby U.S. Ecology can assume that responsibility. That responsibility lies by federal statute with the Department of Transportation and the Nuclear Regulatory Commission.



Mr. Kovacs: Do we not have a lease agreement with the State of Nevada that indicates that you are responsible for the safe storage of that waste?

Mr. Carpenter: Storage, yes; transportation, no.

Mr. Kovacs: What do you do when you get these leaky shipments?

Mr. Carpenter: I have a subprocedure that is established and mandated in our operating license issued by the State of Nevada. When a shipment arrives at the site, we inspect it visually, also inspect the paperwork for compliance, inspect for proper certifications that must accompany shipment. We perform physical checks on each shipment that comes in. We do radiation and contamination surveys. If no discrepancy is detected, the material is accepted at that point, and we take it inside and handle it. If there is a discrepancy discovered which, I believe, is the question you addressed to me: (1) we perform any necessary steps to reduce any hazards to any persons, if such a hazard does exist. It is a standard industry procedure that your immediate actions take precedence. If there is a situation that needs securing, we secure it. (2) is to notify the State of Nevada, John Vaden, notify our own corporate people and go from there. Most recently in these incidences, were one or two where indeed there is a presence of liquid or a leakage of liquid, either very minute amounts of radioactive or no radioactive at all, just rain water.

Mr. Kovacs: The eighteen ounces is a lot of liquid.

Mr. Carpenter: Right, except when you judge that against the size of the container, which I believe was somewhere in the neighborhood of 1500 cubic feet, if we are talking about the same thing.

Mr. Kovacs: Why do you think we have these leakages? Where does it stem from? It is put in a barrel and we are supposed to secure it with a lid, and it is supposed to be marked properly. Half the times they are not marked properly but let's assume they are. Why do we have these leakages? Is it something, it seems improbable that this should happen repeatedly.

Mr. Carpenter: I don't think that there is any question that there has been a lax attitude on the part of shippers in the industry in general.

Mr. Kovacs: Can you revoke their license?

Mr. Carpenter: We don't have legal authority, at this point in time. The State of Nevada does, they have instituted a user permit system. This is step number 3. John Vaden from the Department of Human Resources, Radiological Health Section, issues a statement to the effect that a user permit has been revoked. There are provisions for reinstating but the reinstatement provisions are very stringent. Mr. Vaden then instructs us at the site to either repair the packages, correct the situation as necessary and either dispose of the waste or return it to the shipper.

Mr. Kovacs: How do you dispose of the waste?

Mr. Carpenter: We correct the packaging defects if any. For instance some of the violations that you have here, the only thing wrong with the packaging was a lid on a box was raised by anywhere from an 1/8 of an inch to a 1/2 of an inch, the nails pulled loose. There was no leakage of radioactive, no contamination, but it was a violation of Department of Transportation regulations. We repair the box and dispose of it.

Mr. Kovacs: How about this recent event where toxic waste was transported into the State of Nevada? What is the disposition of that? Is it still at the dump site at this point, or is it buried, where is it now?

Mr. Carpenter: Which one specifically?

Mr. Kovacs: The last one, the one with the rent-a-truck. I was thinking in terms of the PCB. The one in the paper just recently. The one handled with the pickup.

Mr. Carpenter: That was low level radioactive material. The customer was a Texas Licensee, had a valid users permit, shipped the material in to the site. He gave us advance notice. We knew he was coming. He shipped it in a rental truck, similar to a U-haul truck. The material arrived at the site. We performed our routine checks, discovered that on the bottom of the trailer, the radiation levels on the outside of the truck (now this is not radioactive material contamination, it is radiation level), was significantly greater than the Department of Transportation allows. We notified John Vaden, the decision was made that rather than put a shipment back on the road in that condition, it would be wiser to dispose of the material. There would be less hazard to the people that work at the site. There would be no hazard to people over the highway. At that time with the permission of the State of Nevada, we attempted to dispose of the material. We took it to the trench, we took one container of waste off and put it in the trench. When we laid it on its side in the trench, liquid leaked from the container. The liquid had only a very, very trace of radioactivity. It could be considered rain water. We then ceased and desisted, called John Vaden again and informed him the presence of liquid in that waste is a violation of our license, no other regulations but our license. John Vaden said to check the rest of the waste and see if there were other violations. We did that and discovered that three barrels had liquid in them, which is a violation of our license. Mr. Vaden instructed us that the user permit had been suspended for this company, that the material must be prepared in compliance with Department of Transportation regulations, and returned to the shipper. Please note that instruction does come from the State of Nevada. It is not a decision that is made by U.S. Ecology as operators. We got a customer representative to the site. We physically overpacked and put it into compliance with Department of Transportation regulations, that material for shipment. At the site the gentlemen wanted to put all the remaining eight drums in his pickup truck. They would not fit with the overpacks.

Mr. Carpenter continued:

we made. We informed him that in the pickup truck he could not gain compliance with DOT regulations to ship it. There just was not enough room. We made him leave it in that rental truck. As far as we were concerned that is a legal vehicle. We were unaware of any contractual arrangement with the rental company that forbade the use of a rental truck. The material was not leaking, was not in a leaking condition. It was in compliance with DOT regulations when it left the site. The gentlemen apparently, allegedly, went to the rental truck agency in Las Vegas, made the transfer, because he apparently chose not to return the material to the Texas Licensee facility but rather to another licensee facility in California, also the same company, and made the transfer. I also have heard, and I really can't verify the fact that he did change the labels. If he did that, that was also in violation. Once it left the gates in full compliance, again we have no control. It is the Department of Transportation, it is the generator, it's the agreement with the state license agency or the nuclear regulatory agency.

Mr. Schofield: This is one of the reasons why all these bills and things need control of that particular thing. I realize that you're not responsible for the transportation of it. I learned quite a bit when we took the tour at the dump site. The problem we have and the concern we have is still there regardless of where the responsibility is. In regard to that, if you were to refuse a shipment that you realized was leaking, your obligation within your license agreement to notify the State of Nevada that that shipment arrived at your gate, even though it is not within your gate, in your confine, is that part of the license?

Mr. Carpenter: It is a license requirement to report that immediately to the Supervisor of the Radiological Health Section.

Mr. Schofield: Say for instance, something has happened, the guy says I am going to get a violation on this, I have already been transporting it across the highways of the State of Nevada and it is leaking and I am going to be in violation and will probably not even get paid for this load, or whatever the case might be -- do you have any enforcement type thing other than notifying the State Health Service?

Mr. Carpenter: We have no enforcement authority whatsoever. It is a private enterprise.

Mr. Schofield: We'd like to stop that shipment from leaving your facility until such time as we can either have the state come down and repackage it, or see that it is repackaged either for dumping or for being sent back.

Mr. Carpenter: That is where we utilize the user permit enforcement action through the State of Nevada, rather they exercise it at their discretion. It is through our reporting procedures that they discover it, have a full time state inspector at the site who inspects for just those type of violations on every shipment.

(Tape change, question unknown)

Mr. Carpenter: That is a difficult question for me to answer. I will try to explain why. I am not a lawyer, and I have no legal counsel with me today. I am not sure what precedent has been set in the past for any penalty type of assessment to be made by a private entity against other industry or whatever. I just can't answer that question. Considering the nature of these bills, I have thought that U.S. Ecology would have legal counsel here at this hearing. I am quite surprised, frankly.

Mr. Redelsperger: If the dump site should be restricted to just the State of Nevada, would U.S. Ecology continue to run it?

Mr. Carpenter: My feeling is that of course we are a private enterprise to make a profit, as any private enterprise is. I don't feel the company could survive operating that site with just the income from state generated radioactive waste. If we receive all the chemical waste that is generated in the state, that would be another story.

Mr. Redelsperger: How long would it take to fill that site, getting 11,000 tons a year?

Mr. Carpenter: The chemical site would be gone rather quickly. That is a lot of waste.

Mr. Redelsperger: That is what we are shipping out of the state right now?

Mr. Carpenter: Right now we accept less than 10% on an annual basis, somewhere around 10 tons, not very much at all.

Mr. Redelsperger: Perhaps in that case the state would have to take over the site and restrict it to low level to handle our own waste for a period of time.

Mr. Carpenter: By the permitting agreement, right.

Mr. Redelsperger: If we filled it up with hazardous waste, then we would have to be looking to some other place in the state to store our hazardous waste, maybe the test site or something.

Mr. Carpenter: Right! I have just one other comment for the edification of Mr. Greenspun and everyone else. The picture that he had of the truck labeled radioactive on Rancho Drive, I took the liberty that day, since the area that he was in is not a designated route, of calling Tri State Motor Transit with that trailer number, from the picture published in the paper, and I ascertained that was a shipment of low level radioactive waste that went to Mercury, not the Beatty facility.

Mr. Kovacs: I asked Will Crocket to come up. I had a question about the lease agreement between the State of Nevada and the Department of Human Resources and U.S. Ecology. He had testified earlier that AB 200 was a constitutional measure, and we would

Mr. Kovacs continued:

not have any problem with that. Now you have a copy on page 5 of the lease agreement with U.S. Ecology, and, I believe that Will has a copy of this, and we may have to refer to a couple of other pages. This is kind of a technical question, Will, could we act on the license of U.S. Ecology and revoke that license?

Mr. Crocket: In our opinion, no. That would be a violation of the impairment of contract clause in both the federal and state constitutions.

Mr. Kovacs: Not the lease, the license.

Mr. Crocket: Yes, with respect to the lease, that would come under impairment of contract. Revoking the license would be like what the health provision proposed to do recently. It would be in the same vein, a similar exercise of police power.

Mr. Kovacs: We have the police power to enter into a contract with another firm, we have the power to have the Beatty Dump Site, we have the power to have gaming in the state, legalized liquor in this state. It is my understanding that we can, as a body, as far as the Legislature is concerned, can revoke those licenses. Is that correct?

Mr. Crocket: We have the police power. The lease is entered into under general governmental powers. Licensing is conducted under police powers. The state has additional rights of police power that it would not have under ordinary governmental power under which they would be entering into the contract. Our opinion would be that you would not want to address the contract in legislative so that you would not impair it but you could address the license.

Mr. Kovacs: That is the point I'm getting at, we don't have to address the lease but we can address the license itself. What can we do with that license? What is our latitude, what is our perimeters? Where can we go with them?

Crocket: You can go as far as AB 200 and provide for its revocation.

Mr. Kovacs: That is what I was getting at. I did want to get it on record that we do have the ability as far as the license is concerned by enacting AB 200 to revoke the license.

Unknown: You cannot deny them due process, can you? A hearing and due process for revocation of a license under any condition has to have some kind of due process built into it.

Unknown: If you are going to do it statutorily, on July 1, 1981, the department shall revoke each license. It seems to me that you are leaving the state wide open to some action against it without some cause. You can't revoke a gaming license without cause. Isn't there a legal technical question in respect to that?

Unknown: In this respect you are not revoking an individual license. You are talking about repealing the laws allowing the licensing.

Mr. Kovacs: I think we can repeal gaming if we want to.

Mr. Crocket: You can repeal the gaming statutes. In this case it happens that only one person is licensed at this time under Chapter 459. There would be other obligations of the state if the license were revoked. We designated on the bill AB 200 fiscal note "yes." The fiscal note indicates an initial one time cost of approximately \$600,000 but also adds that there is a legal determination of the responsibility for the various acts to be performed on closing the site and may have to go to court. Having read the lease myself, I think the terms of closure are pretty well spelled out. In clause 18, on page 9, closure requirements on final legal termination prior to expiration of the term of this lease or formal voluntary surrender of the lessee rights, the lessee shall perform the following activities as the sole closure obligation, and it lists those obligations. If the closure by legislation is lawful, and we believe it would be, then in our opinion the lessee would have to perform these acts. There is another provision, however, that if the state began to operate the site itself, it would have to reimburse the company for the improvements, that is any structures, etc., that the company has put into the site. There are some economic factors involved.

James L. Grant, a Hydrologist for Law Engineering and Testing Company, in Denver, Colorado, speaking on behalf of U.S. Ecology who have asked me to give a very brief summary of the geologic and hydrologic conditions at the site. The idea being that you are able to judge whether the site is a suitable location for such a facility. (His testimony is attached as EXHIBIT G.)

Mr. Kovacs: You indicated the possibility of runoff from the mountains and from the Armosa River and from the north. What effect could the storage of this material have on that water and that runoff?

Mr. Grant: That water enters the ground and is a great distance below the ground when it reaches the site. For the waste that is buried at the site to interact with that rain water, there would have to be some sort of mobilizing it. Come through the trench, either fluids buried in the trench or rainfall that infiltrates through the trench cover, insufficient quantity to carry this waste material approximately 300 feet from the bottom of the trench to the groundwater. The likelihood of that occurring in the present geologic setting is extremely remote, approaching the impossible, because of the small amount of rainfall in the area, the relatively warm climate that causes a large amount of evaporation to occur when water is available and because of the extremely dry conditions of the soils. The soils are in the condition of a very dry sponge. In order to remove water through them, you first have to satisfy a rather large water deficiency. The climate at the site area is not capable of satisfying that water deficiency.

Unknown: There is a probability?

Mr. Grant: Well, yes there is. I would give you 3 to 1 odds that the sun will rise in the east tomorrow; 2 to 1 that the water will not migrate through the bottom of the trench, unless the climate changes which would be a long term geologic process and not something that would be expected.

Mr. Redelsperger: The point is that you went to some extent just to find a suitable area. You didn't just go out and find a spot out of Nye County somewhere and put in a nuclear dump site.

Mr. Grant: That is correct and this particular site has been described by the USGS, among other people, and I think is the best of the low level radioactive disposal sites in the country. I believe that to be true.

Mr. Redelsperger: On our tour out there, Steve Carpenter claimed to us that you had had some core samples taken in the areas where you first started dumping low level nuclear waste, and I believe he stated it leaked sixteen inches over a period of a number of years. Could you give us some of those details if you have them.

Mr. Kovacs: You worked for U.S. Ecology and obviously they take an awful lot to what you say. Did you work for them or contract to them?

Mr. Grant: I have worked in the past for U.S. Ecology. I now work for Law Engineering. Law Engineering has a contract with U.S. Ecology to provide certain services.

Mr. Kovacs: The point I'm making is, did you indicate that in your opinion that this is probably one of the best nuclear dump sites in North America?

Mr. Grant: I said it was the best low level radioactive waste disposal site in existence today, commercial or federal. That is my opinion, regardless of the fact that U.S. Ecology employs my firm.

Mr. Kovacs: Would your recommendation be to enlarge the site since it is the ideal site?

Mr. Grant: It is my belief that space still exists on the site to allow burial for at least several more years. At that time, assuming that the state of the art is still the same, that the disposition of low level waste is being handled more or less as it is now, then I would recommend that. I think the chances of finding a better site than this site from a geological and hydrological standpoint are almost nil. You may find some that are as good but you would have to work very hard to do it.

Mr. Carpenter: The question regarding migration rates. At some of the older trenches, started in 1962, the USGS conducted a study. The intent of the study was to in fact burrow underneath these trenches and then run lateral drifts parallel to the ground surface



Mr. Carpenter continued:

to attempt to ascertain if any migration had taken place from those oldest trenches. The project was scrapped about, it came to an abrupt end in 1979. It was scrapped thereafter, after several core borings were taken right through the trench caps into the trenches, between the trenches in the old trench area, to the depth that the trenches did extend. A computer reconstruction was made using case data that is a lot of liquid, all liquid in the trench, it was found that the radioactive material would have migrated no more than 8 inches in the seventeen years. The point being that the USGS had to scrap this tunnel project because they could not come up with a system where they could approach 8 inches to the bottom, guess where 8 inches to the bottom of the trench was to verify anything. There was no way they could come that close, that little migration.

Unknown: When you say "best," what do you mean?

Mr. Grant: When I say best, I am speaking basically from a hydrological standpoint and by best I mean that the likelihood of waste being mobilized and moving from the trench into a ground water supply, is smaller at this site than any other site. There is less likelihood of that happening. Therefore, it provides the most containment of any of these sites. There is a place in Chili that has had little or no measureable rainfall that might be a better location still. But very few locations would be measurably better than the Beatty site.

C. Kirby Stoddard, Chemical Engineer, retired: Speaking for myself, I have had 40 years of experience as a chemical engineer, the last 7 or 8 years connected with nuclear fuel reprocessing at various places in the U.S., mostly at the Idaho National Engineering Laboratories near Arco. I am here to speak on behalf of nuclear fuel processing and on behalf of the nuclear industry in connection with power generation. As you all know, the generation of power generates nuclear by-products that have to be reprocessed. Nuclear power is a present and future important source of electrical power. We are well into the nuclear age and the reprocessing of nuclear by-products will be with us from now on. (His testimony is attached as EXHIBIT H.)

Mr. Schofield: I agree with you wholeheartedly except that we have been operating since 1967, the nuclear dump site, and I am very happy to encourage and do everything we possibly can with engineers and the likes but when I get reports that indicate that we have anywhere from 30 to 40 problems and I have to admit that they are transportation but it is still part of the problem, and we have a problem here. From September of 1980 to this present date, we are talking about 40 violations, and that is the reason that you have AB 200 and the likes. We have tried to work with them and it has not accomplished anything.

Mr. Stoddard: I agree with you completely. I supported the previous bill, AB 196, in my testimony. The problem is transportation. I feel as an engineer that those problems can be solved. The



Mr. Stoddard continued:

solution to any problems arriving at the gate of the nuclear fuel disposal area is not in closing down that area because transportation cannot function properly. There are ways. I have several ideas on how that can be done. Each city through which those trucks must pass can pass their own laws delegating or assigning and requiring a truck with nuclear fuel to park in a certain area, probably on the order of a truck gasoline service station and be serviced there. The truck before it can leave on its journey to our depository, should have a permit from the State of Nevada that they can proceed to the State of Nevada, arrive at its borders and go to the depository. If they do that, they are subject to very punitive laws that could be passed.

Mr. Schofield: That is true, they could do that. The only thing is, they are coming in with leaky barrels and things like that. They are subjecting our people in southern Nevada, basically it is a regional problem, but they are subjecting our people to some public hazard. That is what we are concerned about.

Mr. Stoddard: Aren't they punished for it? Then the State of Nevada is at fault.

Mr. Schofield: U.S. Ecology says that they don't have anything within their power, and apparently the state has not decided to do anything about it. That is why we have these bills in front of us and we are going to try to get to the bottom of it.

Mr. Stoddard: That would be the remedy, that you as legislators can pass laws requiring very punitive punishment for any refraction of the law.

Mr. Schofield: That is what these bills are for, that is what we are trying to do.

Mr. Stoddard: I don't read them that way. I think they are negative.

Mr. Schofield: We are trying to regulate the transporting and packaging, and I'm talking about the whole concept of the bills that are before the Legislature during this session.

Mr. Redelsperger: If I may intercede and suggest that Mr. Stoddard look at AB 89 and SB 86, and that goes a long way to solving the problem that you are talking about. Read those and it is addressing the problem that you are talking about.

Ms. Buehler, U.S. Ecology: Just two things I want to mention. In the State of Washington, last Friday, there was a group of users of the Washington site, that have filed suit against Initiative 383, and I would be glad to work with the subcommittee or answer your questions at this point in terms of what is going on with that suit and to provide some of the legal background as to the constitutional questions involved with that. Also, I will leave with the committee a copy of the Northwest Proposed Interstate Compact legislation. It also has some legal problems, particularly with reference to the Low Level Waste Police Act that was passed in December, 1980, but it may also still give you some ideas as to the attempts that are going on. (EXHIBIT I)

Mr. Redelsperger: If we should pass legislation controlling the handling, packaging and the shipping, such as port of entry, and so forth, with strict fines in the State of Nevada, in your background, since you don't have an attorney here, do you know if we can force other states to set up effective regulations to control packaging and handling of that waste prior to leaving that state and inspecting it before it leaves that state and if they don't set up these kind of regulations we refuse waste from those states?

Ms. Buehler: I don't think you can force the state governments. I think you could put the pressures on the industries, and industries could try and back up on to the governments within the states, requesting their states to set up a program of some sort of inspection. These trucks that do come with violations not only pass through Nevada but many of them pass through 6, 8, 10 states in the process of getting here, and there may be some way in which the states could get together and discuss that kind of program as well. Some kind of border check may be better than a third party inspection system, than periodically checking the packers, checking shipping situations. The State of Washington does have a border check of all trucks that are coming in. Something like that could be set up within that state, and perhaps either backpressure through the users of the facility or through working with the states they could be spread further in that sense.

Mr. Redelsperger: The subcommittee could look into this to see if we could legally do something along those lines.

Mr. Kovacs: Do you operate in the State of Washington? Do you experience the same problems?

Ms. Buehler: In terms of packaging problems. Those problems have been experienced in the past. The state inspections have helped. The system is very similar to the system here in terms of revoking licenses for use of the site if there is a violation, fining, etc. They have found that that system there, as I think can be indicated here, has improved the packaging. They have also found that some of the violations are actually DOT violations and the state patrol has found that those and other highway problems in terms of brakes have been drastically improved. The testimony that offered by the Vice President of Tristate Nuclear Division, last September in the Board of Health hearings, had some solid figures in it in terms of what kind of improvement they have seen within the carriage that they do and they are one of the major transporters.

Mr. Schofield: I am going to get with the other subcommittee members and try to set a subcommittee meeting so that any amendments, recommendations, could be received as a subcommittee to further aid us in looking at all this. Anyone else that would be available is welcome. We will post it and try to notify everyone. If anybody wants to be included, watch the board!

ate: March 31, 1981

ECONOMIC DEVELOPMENT AND NATURAL RESOURCES

<del>PLEASE PRINT</del> YOUR NAME	<del>PLEASE PRINT</del> WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL
✓ E T Winter	BKK Corporation	1 ✓		196
✓ R.W. Marshall	Dowd Corp, Houston Int'l Minerals		✓	196
R.W. Marshall	Suneco (Sun Energy Dev. Co.)	✓		211
S.A. CARPENTER	US ECOLOGY (ALSO AVAILABLE FOR QUESTIONS)		1 ✓	200
J.L. Grant	US Ecology (and questions)		2 ✓	200
✓ J.M. Buehler	US Ecology (questions)	2 ✓		196
✓ Nancy J. Jalowitz	League of Women Voters	3 ✓	3 ✓	196 <sup>3</sup> / <sub>200</sub>
11 Charles D. Snow	Pathfinder Mines Corp		✓	196
>4 ✓ Jeanne Kasse	Div. of Environmental Protection	4 ✓		196
5 ✓ Curtis Carter	Anacosta Copper	5 ✓		196
✓ Kerby Stoddard	self		4 ✓	256 <sup>3</sup> / <sub>200</sub>
6 ✓ Carl R. Cahill	Washoe County District Health Dept	6 ✓		196
>7 ✓ Robert Warren	Nevada Mining Assn	7 ✓	5 ✓	196 <sup>3</sup> / <sub>200</sub>
12 ✓ V. V. BOTTIS	NEVADA MINING ASSOCIATION MCDERMOTT MINES		✓	196
Lyle E Campbell	self	✓		AB 211
Brian Greenspan	self			
✓ Army W. [unclear]	Pat. of Nev., Fine	8 ✓		196
Bill Newman	State Engineer			211
Pete Morris	Asst Director of NR			211

OVER

Name	Who You Represent	For	Against
9 Don Baker	Titanium metals	X	19
10 Glen Taylor	B.M.I	X	19
Glen Miller	Sicim Club	← X	21
Evelyn Summers	Environment-individual	X	21

In the Matter of Proposed Assembly )  
Bill No. 196, Regulation of Hazard- )  
ous Waste, Committee on Economic )  
Development and Natural Resources )  
Hearing )  
March 31, 1981 )

STATEMENT

On September 30, 1976, the 93rd Congress passed the Resource Conservation and Recovery Act which was signed into law on October 21, 1976. One objective of the Act is to promote the protection of health and the environment and to conserve valuable material, and energy resources by regulating the generation, treatment, storage, disposal and transportation of hazardous waste which has adverse effects on health and the environment. Within the Act is a provision which allows a state to develop and implement an authorized hazardous waste management program in lieu of a Federal program.

A.B. 196 is, of course, the "enabling legislation" which will allow the State of Nevada to develop and implement a hazardous waste management program in lieu of a Federal program. If Nevada chooses not to develop and implement a hazardous waste program, then a federal program will be implemented by EPA. Sierra Pacific Power Company supports Assemblyman Schöfield's attempt to develop "enabling legislation" for a state hazardous waste program. However, Sierra feels that the following are necessary.

I. Section 8, page 2 "Definition of Hazardous Waste

Add a Subsection 3 which reads as follows:

"Hazardous waste does not include:

1. domestic sewage
2. any mixture of domestic sewage and other wastes that passes through a sewer system to publicly-owned treatment works for treatment.

3. Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended.
4. Irrigation return flows
5. Source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1953, as amended.
6. Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.
7. Household waste, including waste that has been collected, transported, stored, treated, disposed, recovered or reused. "Household waste" means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels).
8. Mining overburden returned to the mine site
9. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.
10. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.
11. Solid wastes generated by any of the following and which are returned to the soils as fertilizers:
  - a. The growing and harvesting of agriculture crops.
  - b. The raising of animals, including animal manures."

The exclusions are contained in the U.S. EPA Regulations and were published in the Federal Register, Vol. 45, No. 98, Monday, May 19, 1980, Part 261.4, page 33120.

II. Section 21

This section should be deleted.

This section suggests that the State assume ownership of all hazardous waste disposal facilities. The facility owner then must pay a fee annually to the State to make the property self-supporting. Federal Superfund Legislation money is available for hazardous waste spill and hazardous waste disposal site cleanup. Section 21 is a duplication of Superfund provisions.

Owners of Hazardous Waste Disposal Facilities are reluctant to deed disposal areas to state or local governments. When sites are deeded to local governments, owners can no longer control the activities/uses of the site, but are held legally responsible for those decisions. This is particularly true after a site has been closed. An example is the Hooker Chemical Company's Operation at Love Canal which after the closure and under state ownership and control became a school site.

Thank you

A. B. 196

RE: A. B. 196 - ASSEMBLYMAN SCHOFIELD FEB. 19, 1981  
COMMITTEE ON ECONOMIC DEVELOPMENT AND NATURAL RESOURCES

My name is Ronald J. Chadek, I am a resident of Pershing County, State of Nevada, engaged in the business of farming for profit. I am currently the Chairman of the Board of Directors of the Lovelock Alfalfa Seed Grower's Association. I speak today not only for myself, but for the association.

Position:

1. We agree there is a need for control of hazardous wastes.
2. We are willing to work with the State to comply with the intent of this Bill as stated in Sec. 2, #3 (pg. 1, line 25) to ensure safe and adequate management of hazardous waste.
3. We would request that Agricultural Operations be exempted from this Bill as they have been in the past (Ref. Sec. 27, NRS 444,620) as we are regulated elsewhere by EPA regulations. (Ref: Regulations Governing Hazardous Waste Management Adopted by the State Environmental Commission. Sep. 1980 - As administered by the State Dept. of Conservation and Natural Resources - Div. of Environmental Protection - C.C. Nevada 89710.) This is keeping within the intent of the named Regulations, ref. pg. 18 - item (8) Exemption of Farmers.
4. If Agriculture Operations must come under this Bill, we have no choice but to dispute the feasibility of this Bill as it relates to agriculture.



5. We take issue with the following items:

Sec. 34 (pg. 7, lines 44-47) - Herbicides and Pesticides are defined as hazardous waste and deleted from the term solid waste - changes NRS 444.490.

Sec. 8 - #2 (pg. 2, lines 24-26) - We object to the broad term "flammable materials" - Wheat stubble in a field is a flammable material, yet I doubt it is the intent of the Bill to regulate Agricultural Burning.

Sec. 14, #7 (Pg. 3, lines 17-21) -

1. Requires a manifest for shipment, even if you are the generator and shipment consists of a short trip to the local facility with a small amount. If you wanted to carry this to extremes, every homeowner who uses Weed-B-Gone, or similar products, could be prosecuted for no manifest, or other non-compliance.

Sec. 17, #1 (pg. 3, lines 49 & 50) -

Treat, store, or dispose of any hazardous waste unless he has first obtained a permit from the department to do so.

We would request a change in wording to include: Treat, store, or dispose of any hazardous waste in a manner inconsistent with its E.P.A. labeling, unless he has first obtained a permit from the department to do so.

I might point out that this is consistent with pg. 18 - item 8 of the previously mentioned Environmental Regulation.

Sec. 19 (pg. 4, lines 23-26)

Relating to Financial Responsibility.

The question arises about a facility which is administered by a "District". (A District is considered a unit of government with powers to tax.)

Specifically - lines 27-36

1. Liability insurance
2. Security in case of abandonment
3. Other evidence of financial responsibility

If a "District" is to be included, then the statement of No Effect on local government is false.

We would request that a Weed Control District be exempt from showing or complying with Financial Responsibility due to its being a form of government with the power of taxation.

Sec. 21. (pg. 4, lines 46-49)

We have an extreme objection to condemnation of private land in a state which is 87% owned by government units already.

We also dispute the necessity to transfer to state ownership the part of the facility on which the disposition of hazardous waste will be made.

Sec. 24, #1 (pg. 5, lines 19-24)

- (a) Dealing with requirement for installing, calibrating, using, and maintaining monitoring equipment.
- (b) Taking samples and performing tests and analyses.

At what cost?

We submit that the State rather than the licensee should comply with (a) and (b), as the need arises, with State owned equipment and qualified personnel.

Sec. 30 (pg. 6, lines 47-49, and pg. 7, lines 1 & 2)

The court may not deny a restraining order or an injunction because the director has failed to show that there is no adequate remedy at law, etc., etc.

We request a legal opinion as to whether this section is not usurping Judicial powers, or otherwise interfering with the separation of powers under the constitution.

Sec. 31, #1 (pg. 7, lines 5 & 6)

1. Any person who violates or who willfully or negligently abets a violation of any provision of Secs. 2 to 26, etc., etc.

We would request a wording change to read:

1. Any person who willfully violates (but not including an accidental willful violation) or who willfully or negligently abets a violation of any provision of any provision of Secs. 2-26, etc., etc.

Sec. 33, #1 (pg. 7, lines 30-34)

Any person who intentionally or with criminal negligence violates any term or condition of a permit issued pursuant to Sec. 18 of this Act, or an order issued by the department to hazardous waste:

1. Is guilty of a gross misdemeanor for the first violation.

0281

Again I point out Agricultural accidents which may result in a spill (at that time it becomes hazardous waste) that may be willfully caused, but certainly not with criminal intent.

It seems a mandatory gross misdemeanor conviction is extreme punishment without a review of circumstance.

Whereas farmers are required to be trained and certified by the State before obtaining a Certificate to use Restricted Use Pesticides, and whereas farmers do in fact live and raise their families in the midst of the chemicals they use, and whereas the State Department of Agriculture regulates and inspects farms and agricultural operations with respect to pesticides; we submit that Agricultural operations regulations should come under the jurisdiction of the State Department of Agriculture regulations and not be included with other industrial waste regulations in other departments.

Agin, we ask for Agricultural exemption from this bill.

Respectfully submitted.

Ronald Chadek

STATEMENT OF LEAGUE OF WOMEN VOTERS OF NEVADA RE A.B. 196, March 31, 1981

By  
Daisy J. Talvitie

The League of Women Voters, in the last few years has concentrated much of its energy on studies of hazardous waste problems both in Nevada and across the nation as a whole. Our research has included research of numerous documents, statutes, and regulations. It included review of Congressional investigations, interviews with state, local, and EPA personnel, and telephone conferences with Mr. Daykin of your Legislative Counsel Bureau. I personally also attended a national three day conference in West Virginia last November where I had an opportunity to talk with representatives of other states and with individuals who had suffered major property and health damages as a result of improper management of hazardous waste. The League's conclusion is that AB 196 is an absolute "must pass" bill. The hazardous waste problem has been declared by Congress as having reached a crisis situation--as one of the most serious threats to domestic welfare of the U.S. today. To quote from the Congressional Committee report "This problem cannot be overstated. Even an extraordinary effort, commenced immediately, cannot achieve protection for the American public for years to come. Industry has shown laxity, not infrequently to the point of criminal negligence in soiling our land and adulterating our waters with its toxics." Today much of our nation's groundwater, are being contaminated to the point in many areas that they are no longer useable and won't be for generations to come--perhaps never. There are areas where public water supply systems are contaminated and may have to be rebuilt. There are areas where citizens have suffered death, sterility, serious nerve and kidney disorders, cancer, and other major health problems from hazardous waste exposures due to improper disposal. Millions of dollars in property damage has occurred and clean-up of hazardous and abandoned sites is costing multi-millions. While Congress has acted with passage of the Resource Conservation and Recovery Act, commonly referred to as RCRA, Congress also recognized that the federal government alone cannot accomplish the task before us. It will take a concerted effort by the federal government, the states, industry

and all citizens working together to bring the problem under control. We must not react with panic and emotionalism but must move forward with determination. The League cannot overemphasize the urgency of passage of A.B. 196. That is not to say that the bill is perfect for it is not. The League today is submitting a series of amendments that we feel are needed to clarify some sections and to correct some of the bill's deficiencies and weaknesses. Our method of developing these amendments has been largely through comparison with what is developed and published as a model hazardous waste law. In submitting this series of amendments, we wish to stress that the proposed corrections should in no way cause you to feel that A.B. 196 is not basically sound nor do we wish to in any way interfere with passage of the bill.

The League calls your attention to a serious problem of conflicting departmental jurisdictions over non-radioactive hazardous waste control as it relates to state-owned disposal sites. The problem is the result of language in existing statutes passed at the 1977 Legislative session. The language found in those statutes is causing confusion in discussing all bills related to hazardous and radioactive waste. It is not adequately addressed in A.B. 196 or through any other bill that has been introduced in this legislative session. And we feel that A.B. 196 is the instrument through which the problem should be addressed. In the 1977 session, conflicting laws were passed relating to control of state-owned disposal sites for radioactive and chemical wastes. S.B. 38 of that session gave the state board of health the authority to adopt regulations governing fees, etc. for the use of such sites, to control the funds, to enter into agreements relating to operation and use of the sites, and control of such sites through regulations adopted by the state board of health which were to be incorporated into the agreement developed by the director of Human Resources in leasing the site to an operator. It clearly gave the department of human resources the entire control of the full eighty acres of the Beatt site, forty acres of which are used for low-level radioactive waste disposal and forty acres used for other types of hazardous waste. However, S.B. 151 of that session placed control of non-radioactive hazardous waste under the Department of Conservation and Natural Resources through one simple sentence that declared

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the Dept. of Conservation and Natural Resources to be designated as the department responsible for programs falling under RCRA. This is a mish-mash of law that puts the Environmental Commission in the position of responsibility for adopting regulations for sites, and for control of non-radioactive waste but if sites are state-owned, the regulations would also have to be adopted by the state board of HEALTH BEFORE THEY COULD BECOME A PART OF THE AGREEMENT AND ENFORCEABLE.. It also places Conservation and Natural Resources in the position of reliance on the Director of Human Resources for enforcement of controls at Beatty. A.B. 196 clearly intends to place non-radioactive waste and site control under the Department of Conservation and Natural Resources where it properly should be since the problems are so closely intertwined with air and water.. But A.B. 196 does not amend the existing statutes to remove the conflicting language and by this failure, it still leaves us with a mish-mash of statutory conflicts. We have discussed this problem with the agencies involved during the past two years and also with Mr. Daykin of the Legislative Counsel Bureau. We discussed it again yesterday and have requested an appointment with Mr. Daykin who has assured us he will be willing to lend us his assistance in drafting a necessary amendment. With your permission, we will work closely with Mr. Daykin to bring to you the necessary language for correction of this deficiency which we urge you to adopt.

I will now, as quickly as possible, go through our proposed amendments which we are ready to present.

AMENDMENTS TO A.B. 196

PROPOSED BY THE LEAGUE OF WOMEN VOTERS OF NEVADA

- p. 1, line 23 ( Section 2, subsection 2). Amend to add "generation"  
"Establish a program for regulation of the generation, storage, . . ."

It is essential that generators be included in the hazardous waste management program. Unless the generators comply with all the requirements for packaging, transport, manifests, etc., the state cannot cannot operate an effective hazardous waste control system.

- p. 2, line 21 (Section 8, subsection 1 (b)) - definition of "Hazardous Waste". Amend to add "storage, transport, disposition, or other improper management."

Improper transport is one of hazardous waste management's most vulnerable areas, particularly in terms of public exposure. Transport should be included in the definition at this point. This would also be consistent with the inclusion of transport in the definition of "hazardous Waste Management System".

The broad phrase "other improper management" covers any other unspecified situations in which the wastes would be a hazard to human health, public safety, or the environment.

- p. 2, Section 8 - definition of "Hazardous Waste". Amend to add a new subsection 3. "Hazardous waste does not include solid or dissolved material in domestic sewage and in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Clean Water Act, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended."

PL 94-580 (Resource Conservation and Recovery Act of 1976) exempts these wastes because they are regulated by other laws.

- p. 2 Amend to add a definition for "Generation". "Generation" means the act or process of producing waste materials.

This provides a specific meaning for the term in the law and avoids any confusion as to interpretation.

- p. 2, line 28 (Section 9, "Management of Hazardous Waste") amend to add generation. "control of the generation, collection, storage . . ."  
The rationale is the same as for the inclusion of "generation on p. 1.



- p. 2, Amend to add a definition for "Manifest". "Manifest" means the form or document used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transport.

The manifest is an essential part of the hazardous waste management program since it provides the necessary information as to the kinds and quantities of wastes being handled. It is also the means by which the state can track the waste from "cradle to grave" and the definition must, therefore clearly cover the need for a manifest at all times .

The League prefers this definition of manifest, taken from the model law because there is no opportunity to interpret the definition to mean a manifest is necessary only between the point of generation and the point of storage, or the point of treatment or the point of disposal and not necessary between point of storage and point of treatment, for example. When used with the proposed definition of "transport", this definition of "manifest" clearly means the manifest is used at all times.

- p. 2 Amend to add definition of "Transport". "Transport" means the movement of hazardous wastes from the point of generation to any intermediate points, and finally to the point of ultimate storage or disposal.

This definition of "transport", when used with the definition of "manifest", makes it clear that the manifest is necessary at all times.

- p. 2, line 30 (Section 10, definition of "Person") Amend to delete the existing definition and add "Person" means any individual, trust, firm, joint stock company, corporation, partnership, association, or other legal entity, State, municipality, commission, political subdivision, interstate body, or Federal department, agency or instrumentality."

This is the definition in PL 94-580 and is broader than the wording to be deleted.

- p. 2, line 39 (Section 12, definition of "Treatment") Amend to add "it is less hazardous, nonhazardous, safer for transportation, safer for storage, amenable to recovery of resources from it, reduce its volume."

In many cases, storage is part of the hazardous waste management and

means to make storage safer should be included in the definition.

- p. 2, Amend to add definition of "Treatment Facility". "Treatment Facility" means a location at which hazardous waste is subjected to treatment and may include a facility where hazardous waste has been generated.

This definition makes it clear that on-site treatment facilities are included and that treatment facilities operated by generators on their own property are not to be excluded from regulation.

- p. 2, line 42 (Section 13, the commission, subsection 1). Amend to add "1. Within six months of the effective date of this act, adopt . . ." This wording provides a time frame to initiate the program expeditiously.

- p. 2, line 49 (Section 13, subsection 2 (b)) Amend to add "(b) Develop a plan for the safe and efficient management of hazardous waste for the entire state. The plan shall include but not be limited to (1) identification of those locations within the State which are suitable for the establishment of hazardous waste treatment or disposal facilities and (2) identification of those locations within the State which are not suitable for the establishment of hazardous waste treatment or disposal facilities. The commission shall adopt the plan after review and public hearings."

Any plan for hazardous waste management must be "safe and efficient." The requirements for site information in the plan identifies for everyone just which areas are suitable for hazardous waste facilities as well as excluding any areas not suitable. The site information would also be subject to public hearing process. Official adoption of the plan will provide the basis for the hazardous waste management program.

- p. 3, line 7 (Section 14, Regulations) Amend to add "3. Govern generation, storage, treatment, and disposal of hazardous waste."

Rationale is the same as for inclusion of "generation" on p. 1.

- p. 3, (Section 14, Regulations) Amend to add a new subsection following subsection 5. "5a. Provide standards and procedures for the certification of supervisory personnel at hazardous waste treatment or disposal facilities or sites."

Adequately trained personnel are necessary to the proper operation of the treatment or disposal sites.

- p.3, line 22 (Section 14, Regulations, subsection 8) Amend to add "8. Take into account population densities, climatic and geologic variations, and other factors relevant to hazardous waste management within the state."

This allows the commission to consider the differences between regions in the state, but it also recognizes the need to protect the environment.

- p. 3, after line 22 (Section 14, Regulations) Amend to add subsection 9. "9. Provide procedures for public hearing in the affected areas when the location of additional hazardous waste treatment or disposal sites or facilities is to be determined."

Lack of public involvement in decisions concerning hazardous waste management has been has been one of the most critical problems faced by state agencies nationally. It is important that the public understand the issues and become involved in planning for the management of hazardous wastes. This will require an additional effort over and above the normal public hearing procedures.

- p. 3, lines 27-32 (Section 15, Department authority). The League of Women Voters recognizes the need for the authority set forth in this subsection. There is, however, a conflict with the provisions of NRS 459 and points up the continuing problem of jurisdiction over the existing hazardous waste site at Beatty.

This same conflict exists with Section 19 (p. 4, lines 23-26) and Section 20 (p. 4, lines 37-45).

- p. 4, lines 42-45 (Section 20, subsection 3) Amend to permit a percentage of the fees to be used by the department to cover the costs of the administration of the program.

- p. 5, line 4 (Section 21, subsection 2) Amend to add "2. The department may acquire real property by condemnation or otherwise for the disposal of hazardous waste if the property meets the commission's criteria"

for suitability for hazardous waste disposal use."

The department should be limited to purchase of property which is determined to be suitable for such purposes.

- p. 6, (Section 26) Amend to add a subsection 4. "4. For purposes of this act, all peace officers and all health officers may act as authorized representatives of the department in order to detain any hazardous waste in transport when there is reason to believe the shipment is improperly packaged, improperly routed, or in any other way does not conform to the manifest requirements."

*reporting immediately to State personnel*  
 This wording permits immediate action on the part of local officials if there are problems with a hazardous waste shipment. This could be particularly important in areas where the department has no permanent staff located (for example, Las Vegas and Reno) and the vast stretches in between). In rural areas the ability of local officials to detain could deter the midnight dumper.

- p. 7, Lines 9, and 30-38 (Section 31 and 33, Penalties) The penalties imposed are considerably less stringent than the federal penalties. *Should also have authority to cite the illegal dumper & turn case over to State for action*  
 The League believes that violations which willfully and knowingly endanger human life should incur more substantial penalties.

Federal penalties call for \$25,000 per day in fines for continued violations of permit conditions. If violations were committed knowingly and were material violations, the penalty mounts to \$250,000 and up to 2 years in jail. Recent amendments to RCRA have added similar stiff penalties for reckless endangerment which cover cases in which human life is deliberately and knowingly endangered. (\$250,000 fine and 2 years in prison for an individual; up to \$1,000,000 for corporations.) If there is unjustified or inexcusable disregard for human life, the penalty is \$250,000 and 5 years in prison.

Nevada's proposed penalty for criminal negligence is gross misdemeanor on the first offense and for the second offense, it is set at 1 to 6 years in prison or a fine of not more than \$5,000, or both.

League believes these penalties should be raised commensurate to the seriousness of the offense.

Mr. Chairman, Members of the Committee, my name is Curtis Carter and I represent the Anaconda Copper Company.

A. B. 196 is enabling legislation for Nevada to assume control over the federal program to regulate solid and hazardous waste within the state. We fully support the concept of state primacy under this and all other federal regulatory programs. However, there are two very important elements of A. B. 196 that we feel must be brought to the committee's attention:

Section 2 of the bill defines hazardous waste in terms that are much broader than those used in the federal statutes.

Amendment passed by Congress last year specifically exempted those waste generated in the production of: oil, gas and geothermal resources, electricity from coal, cement, uranium and hard-rock metals. These high volume wastes are exempt from the federal program for a period of at least thirty-six months while EPA conducts studies to determine if these waste pose any significant hazard to public health or the environment. We strongly urge the committee to adopt the same statutory exemption passed by Congress. Attachment 2 is the amended federal program with sections applying to the exemption highlighted in yellow.

Secondly, Section 21(1) of A. B. 196 creates a potentially very dangerous situation in that the person who disposed of hazardous waste must deed the property to the state, thus relinquishing responsibility for the site while maintaining perpetual liability. This is very similar to the situation

that arose between Hooker Chemical and the Niagara Falls Board of Education in 1952. Twenty-six years later this came to the general public's attention as Love Canal. From this well publicized example, it should be clear that the disposer of hazardous waste is in a very tenuous position when the ultimate responsibility for the disposal site is vested in others that may not share in the liabilities. We feel that the disposer of hazardous waste should maintain responsibility of the disposal site, subject to periodic review and inspection by the Department of Conservation and Natural Resources.

To these ends, we offer Attachment 1 of this testimony as suggested language changes to A. B. 196. Thank you for your time, and I'll try to answer any questions you might have.

ATTACHMENT NUMBER 1

PROPOSED AMENDMENTS TO A. B. 196

Page 2, line 26 - Insert:

3. The term hazardous waste does not include any fly ash waste, bottom ash waste, slag waste, flue gas emission control waste generated from the combustion of coal or other fossil fuels, solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore or cement kiln dust waste, and drilling fluids, produced waters and other waste associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

Page 4, line 46 - Delete Sec. 21 (1)

SOLID WASTE DISPOSAL ACT AMENDMENTS  
WASHINGTON

OCTOBER 1, 1980.—Ordered to be printed

8 1980

PATRICIA M. BOINSKI

Mr. STAGGERS, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1156]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1156) to amend and reauthorize the Solid Waste Disposal Act having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

*SECTION 1. This Act may be cited as the "Solid Waste Disposal Act Amendments of 1980".*

*SEC. 2. (a) Section 1004(14) of the Solid Waste Disposal Act is amended to read as follows:*

*"(14) The term 'open dump' means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 and which is not a facility for disposal of hazardous waste."*

*(b) Section 1004(19) of such Act is amended to read as follows:*

*"(19) The term 'recovered material' means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process."*

*SEC. 3. Section 1006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:*



"(c) **INTEGRATION WITH THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977.**—(1) No later than 90 days after the date of enactment of the Solid Waste Disposal Act Amendments of 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977. If the Administrator determines that any requirement of final regulations promulgated under any section of subtitle C relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

"(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subtitle C of this Act with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977."

**SEC. 4. (a)** The heading for section 2001 of the Solid Waste Disposal Act is amended by adding the following at the end thereof: "AND INTERAGENCY COORDINATING COMMITTEE".

(b) The item in the table of contents relating to section 2001 of such Act is amended by adding the following at the end thereof: "and interagency coordinating committee".

(c) Section 2001 of such Act is amended by inserting "(a) OFFICE OF SOLID WASTE.—" after "2001." and by inserting a new subsection (b) as follows at the end thereof:

"(b) **INTERAGENCY COORDINATING COMMITTEE.**—(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this or any other Act. For purposes of this subsection, the term 'resource conservation and recovery activities' shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects, related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

"(2) The Interagency Coordinating Committee shall include oversight of the implementation of

"(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;

"(B) the May 30, 1978, Interagency Agreement between the Department of Commerce and the Environmental Protection Agency on the Implementation of the Resource Conservation and Recovery Act; and

"(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.

"(3) The Interagency Coordinating Committee shall submit to the Congress by March 1, 1981, and on March 1 each year thereafter, a five-year action plan for Federal resource conservation or recovery activities which shall identify means and propose programs to encourage resource conservation or material and energy recovery and increase private and municipal investment in resource conservation or recovery systems, especially those which provide for material conservation or recovery as well as energy conservation or recovery. Such plan shall describe, at a minimum, a coordinated and nonduplicatory plan for resource recovery and conservation activities for the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities."

SEC. 5. Section 2002(a) of the Solid Waste Disposal Act is amended as follows:

(1) in paragraph (4), by striking out "and" at the end thereof;

(2) in paragraph (5), by striking the period and inserting in lieu thereof "; and"; and

(3) by adding the following new paragraph at the end thereof:

"(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this Act relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this Act and of the Hazardous Materials Transportation Act."

SEC. 6. (a) Section 2006(b) of the Solid Waste Disposal Act is amended by inserting after "subsection (a)" a comma and the phrase "or \$5,000,000 per fiscal year, whichever is less,"

(b) Section 2006 of such Act is amended by adding the following new subsection at the end thereof:

"(d) STATE AND LOCAL SUPPORT.—Not less than 25 per centum of the total amount appropriated under this title, up to the amount authorized in section 4008(a)(1), shall be used only for purposes of support to State, regional, local, and interstate agencies in accordance with subtitle D of this Act other than section 4008(a)(2) or 4009."

SEC. 7. Subsection (b) of section 3001 of the Solid Waste Disposal Act is amended by inserting "(1)" after "(b)" and by adding the following new paragraphs at the end of such subsection:

"(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of subtitle C until at least 24 months after the date of enactment of the Solid Waste Dis-

posal Act Amendments of 1980 and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

"(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

"(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

"(B) Not later than six months after completion and submission of the study required by section 8002(m) of this Act, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subtitle for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 8002(m).

"(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

"(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subtitle until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 8002 of this Act and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

"(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

"(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

"(iii) Cement kiln dust waste.

"(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 2002 of this Act—

"(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where

such wastes are disposed of are known and can be located in the future, and

"(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

"(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 8002 of this Act, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

"(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act. Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

"(iii) The Administrator may prescribe regulations, under the authority of this Act, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

"(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

"(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 8002 of this Act, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subtitle for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it."

SEC. 8. Section 3002(5) of the Solid Waste Disposal Act is amended by inserting "and any other reasonable means necessary" after "use of a manifest system", and by inserting ", and arrives at," after "disposal in".

SEC. 9. Section 3004 of the Solid Waste Disposal Act is amended by inserting after the first sentence thereof "In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations."

SEC. 10. Section 3005(e) of the Solid Waste Disposal Act is amended by striking "facility is in existence on the date of enactment of this Act," and inserting in lieu thereof "facility is in existence on November 19, 1980,"

SEC. 11. Section 3005 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(f) COAL MINING WASTES AND RECLAMATION PERMITS.—Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subtitle shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit."

SEC. 12. (a) Section 3007(a) of the Solid Waste Disposal Act is amended as follows:

- (1) by striking "subtitle" and inserting in lieu thereof "title";
- (2) by striking "maintained by any person" after "establishment or other place";
- (3) by inserting "or has handled" after "otherwise handles";
- (4) by striking "any officer or employee" and inserting in lieu thereof "any officer, employee or representative";
- (5) by striking "duly designated officer employee" and inserting in lieu thereof "duly designated officer, employee or representative";
- (6) by striking "furnish or permit" and inserting in lieu thereof "furnish information relating to such wastes and permit";
- (7) by striking out "such officers or employees" and inserting in lieu thereof "such officers, employees or representatives";
- (8) by inserting "or have been" after "where hazardous wastes are"; and

(9) by striking "officer or employee obtains" and inserting in lieu thereof "officer, employee or representative obtains".

(b) Section 3007(b) of such Act is amended as follows:

(1) by inserting "or any officer, employee or representative thereof" before "has access under this section";

(2) by striking "the Administrator (or the State, as the case may be) shall consider such information or portion thereof" and inserting in lieu thereof "such information or particular portion thereof shall be considered";

(3) by inserting "(1)" before "Any records" and adding at the end thereof the following new paragraphs:

"(2) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

"(3) In submitting data under this Act, a person required to provide such data may—

"(A) designate the data which such person believes is entitled to protection under this subsection, and

"(B) submit such designated data separately from other data submitted under this Act.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

"(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee"; and

(4) by inserting "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)".

SEC. 13. Section 3008 of the Solid Waste Disposal Act is amended as follows:

(1) in subsection (a)(1), by striking "the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification," and by inserting "immediately or" after "compliance";

(2) in subsection (a)(2), by striking "thirty days";

(3) in subsection (b), by striking "or any suspension or revocation of a permit" and "or notice of the suspension or revocation";

(4) in subsection (c), by inserting "may include a suspension or revocation of a permit issued under this subtitle, and" after "Any order issued under this section"; and

(5) by striking out subsection (d) and substituting:

"(d) CRIMINAL PENALTIES.—Any person who—

"(1) knowingly transports any hazardous waste identified or listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in case of a State program), or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052),

"(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subtitle either—

"(A) without having obtained a permit under section 3005 (or 3006 in the case of a State program) or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052); or

"(B) in knowing violation of any material condition or requirement of such permit;

"(3) knowingly makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of compliance with this subtitle; or

"(4) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste (whether such activity took place before or takes place after the date of the enactment of this paragraph) and who knowingly destroys, alters, or conceals any record required to be maintained under regulations promulgated by the Administrator under this subtitle shall, upon conviction, be subject to a fine of not more than \$25,000 (\$50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

"(e) **KNOWING ENDANGERMENT.**—Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this subtitle—

"(1)(A) in violation of paragraphs (1) or (2) of subsection (d) of this section, or

"(B) having applied for a permit under section 3005 or 3006, and knowingly either—

"(i) has failed to include in his application material information required under regulations promulgated by the Administrator, or

"(ii) fails to comply with the applicable interim status regulations and standards promulgated pursuant to this subtitle,

who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, and

"(2)(A) if his conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or

"(B) if his conduct in the circumstances manifests an extreme indifference for human life.

shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than 2 years, or both, except that any person who violates subsection (e)(2)(B) shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1,000,000.

"(f) **SPECIAL RULES.**—For the purposes of subsection (e)—

"(1) A person's state of mind is knowing with respect to—

"(A) his conduct, if he is aware of the nature of his conduct;

"(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

"(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

"(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(A) the person is responsible only for actual awareness or actual belief that he possessed; and

"(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

"(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(A) an occupation, a business, or a profession; or

"(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

"(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

"(5) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(6) The term 'serious bodily injury' means—

"(A) bodily injury which involves a substantial risk of death;

"(B) unconsciousness;

"(C) extreme physical pain;

"(D) protracted and obvious disfigurement; or

"(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(g) CIVIL PENALTY.—Any person who violates any requirement of this subtitle shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each



day of such violation shall, for purposes of this subsection, constitute a separate violation."

SEC. 14. Section 3009 of the Solid Waste Disposal Act is amended by adding at the end thereof the following new sentence: "Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations."

SEC. 15. Section 3010(a) of the Solid Waste Disposal Act is amended by striking out "or revision" and by inserting the following at the end of the first sentence thereof: "In revising any regulation under section 3001 identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subtitle, the Administrator may require any person referred to in the preceding sentence to file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) the notification described in the preceding sentence."

SEC. 16. Section 3011 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) **ACTIVITIES INCLUDED.**—State hazardous waste programs for which grants may be made under subsection (a) may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste."

SEC. 17. (a) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new sections at the end thereof:

**"HAZARDOUS WASTE SITE INVENTORY**

"SEC. 3012. (a) **STATE INVENTORY PROGRAMS.**—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

"(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 3005 for such storage or disposal;

"(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;

"(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

"(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information re-

specting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

"(b) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (a) is not adequately providing information respecting the sites in such State referred to in subsection (a), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a);

"(2) the funds allocated under subsection (c) for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(c) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Solid Waste Disposal Act Amendments of 1980 to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section \$20,000,000.

"(d) NO IMPEDIMENT TO IMMEDIATE REMEDIAL ACTION.—Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

"MONITORING, ANALYSIS, AND TESTING

"SEC. 3013. (a) AUTHORITY OF ADMINISTRATOR.—If the Administrator determines, upon receipt of any information, that—

"(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

"(2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

"(b) PREVIOUS OWNERS AND OPERATORS.—In the case of any facility or site not in operation at the time a determination is made under subsection (a) with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a).

"(c) PROPOSAL.—An order under subsection (a) or (b) shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

"(d) MONITORING, ETC., CARRIED OUT BY ADMINISTRATOR.—(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) who is able to conduct such monitoring, testing, analysis, or reporting, he may—

"(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

"(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) to reimburse the Administrator or other authority or person for the costs of such activity.

"(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b).

"(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 3007.

"(e) ENFORCEMENT.—The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed \$5,000 for each day during which such failure or refusal occurs."

(b) The table of contents for such subtitle C is amended by inserting the following new items at the end thereof:

"Sec. 3012. Hazardous waste site inventory.

"Sec. 3013. Monitoring, analysis, and testing."

SEC. 18. (a) Section 4003(2) of the Solid Waste Disposal Act is amended by striking out "section 4005(c)" and inserting in lieu thereof "sections 4004(b) and 4005(a)".

(b) Section 4003(5) of such Act is amended by inserting "State or" after "The plan shall provide that no", and by striking the period after "resource recovery facilities", and substituting the following: "from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities."

SEC. 19. (a) Section 4005 of the Solid Waste Disposal Act is amended by deleting subsection (a) in its entirety and by redesignating subsection (c) as (a).

(b)(1) Section 4005(a) of the Solid Waste Disposal Act, as redesignated by this section, is amended by striking "Any" and inserting in lieu thereof "Upon promulgation of criteria under section 1008(a)(3), any"; by inserting "and 4003(3)" after "4003(2)"; by striking "the inventory under subsection (b)" after "not to exceed 5 years from the date of publication of" and inserting in lieu thereof "criteria under section 1008(a)(3)".

(2) Section 4005(b) of the Solid Waste Disposal Act is amended by striking "Not" and inserting in lieu thereof "To assist the States in complying with section 4003(3), not".

(b) Section 4006(b)(1)(B) of such Act is amended by striking out "functions" wherever it appears and inserting in lieu thereof "management activities".

SEC. 20. Section 4008(e) of the Solid Waste Disposal Act is amended by—

(1) striking out "identify communities" in paragraph (1) thereof and substituting "identify local governments";

(2) striking out clause (A) thereof and redesignating clauses (B) and (C) as (A) and (B), respectively;

(3) striking out "solid waste disposal facilities in which more than 75 per centum of the solid waste disposed of is from areas outside the jurisdiction of the communities" in paragraph (1) thereof and substituting "a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan";

(4) striking out "which have" in clause (B) of paragraph (1), as redesignated by paragraph (2) of this section, and substituting the following "which are located over an aquifer which is the source of drinking water for any person or public water system and which has";

(5) inserting before the period at the end of paragraph (1): ", including possible methane migration";

(6) striking out "each of the fiscal years 1978 and 1979" in paragraph (2) and substituting "the fiscal year 1980 and \$1,500,000 for each of the fiscal years 1981 and 1982";

(7) striking out "the conversion, improvement" in the first sentence of paragraph (2) and all that follows down to the period at the end of such sentence and substituting "containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)";

(8) inserting the following new sentence at the end of paragraph (2): "No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size."; and

(9) striking out paragraph (3) thereof.

SEC. 21. (a) Section 5002 of the Solid Waste Disposal Act is amended by striking out "the date of the enactment of this Act" and inserting in lieu thereof "September 1, 1979".

(b) Section 5003 of such Act is amended by striking out "the enactment of this Act" and inserting in lieu thereof "September 1, 1979,".

(c)(1) Subtitle E of such Act is amended by inserting the following new section after section 5004:

**"NONDISCRIMINATION REQUIREMENT**

"SEC. 5005. In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials."

(2) The table of contents for such Act is amended by inserting the following new item after the item relating to section 5004:

"Sec. 5005. Nondiscrimination requirement."

SEC. 22. Section 6002 of the Solid Waste Disposal Act is amended as follows:

(1) in subsection (c)(1), by deleting the first sentence and inserting in lieu thereof the following: "After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines.";

(2) in subsection (c)(1)(C), by striking "clause (ii)" and inserting in lieu thereof "subparagraph (B)";

(3) in subsection (c)(2), by deleting "recovered material and recovered-material-derived fuel" and inserting in lieu thereof the following: "energy or fuels derived from solid waste";

(4) in subsection (c)(3), by deleting everything after "vendors" and inserting in lieu thereof a colon and the following:

"(A) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

"(B) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.";

(5) by amending subsection (d), to read as follows:

"(d) SPECIFICATIONS.—All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

"(1) as expeditiously as possible but in any event no later than five years after the date of enactment of this Act, eliminate from such specifications—

"(A) any exclusion of recovered materials and

"(B) any requirement that items be manufactured from virgin materials; and

"(2) within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item."

(6) in subsection (e), by deleting the second sentence and inserting in lieu thereof the following: "Such guidelines shall—

"(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section; and

"(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

"(A) the availability of such items;

"(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

"(C) the economic and technological feasibility of producing and using such items; and

"(D) other uses for such recovered materials."

SEC. 23. Section 6004 of the Solid Waste Disposal Act is amended by—

(1) inserting immediately after "an executive agency (as defined in section 105 of title 5, United States Code)" in subsection (a)(1), "or any unit of the legislative branch of the Federal Government";

(2) inserting after "Each Executive agency" in subsection (a)(2), "or any unit of the legislative branch of the Federal Government"; and

(3) inserting after "The President" in subsection (a)(4) "or the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government".

SEC. 24. Section 7001 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(f) OCCUPATIONAL SAFETY AND HEALTH.—In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970, the Administrator shall—

"(1) provide the following information, as such information becomes available, to the Secretary and the Director:

"(A) the identity of any hazardous waste generation, treatment, storage, disposal facility or site where cleanup is planned or underway;

"(B) information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and

"(C) incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site; and

"(2) notify the Secretary and the Director of the Administrator's receipt of notifications under section 3010 or reports under sections 3002, 3003, and 3004 of this title and make such notifications and reports available to the Secretary and the Director."

SEC. 25. Section 7003 of the Solid Waste Disposal Act is amended by—

(1) inserting "(a) AUTHORITY OF ADMINISTRATOR.—" after "7003";

(2) striking out "is presenting" and inserting in lieu thereof "may present";

(3) striking out "the alleged disposal" and inserting in lieu thereof "such handling, storage, treatment, transportation or disposal"; and

(4) adding the following at the end thereof: "The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

"(b) VIOLATIONS.—Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) may, in an action brought in the appropriate United

States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues."

SEC. 26. Section 7004(b) of the Solid Waste Disposal Act is amended by inserting "(1)" after "Public Participation.—" and by inserting the following new paragraph at the end thereof:

"(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 3005, the Administrator shall—

"(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

"(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No state program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 3006 unless such program provides for the notice and hearing required by the paragraph."

SEC. 27. (a) Section 7006 of the Solid Waste Disposal Act is amended as follows:

(1) by inserting "(a) REVIEW OF FINAL REGULATIONS AND CERTAIN PETITIONS.—" before "Any";

(2) by adding after "pursuant to this Act" the following: "and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this Act";

(3) by adding after "or requirement under this Act" the following: "or denying any petition for the promulgation, amendment or repeal of any regulation under this Act";

(4) by striking out "Columbia. Any" and substituting "Columbia, and";

(5) by inserting "or denial" after "date of such promulgation";

(6) by inserting "for review" after "date of such petition";

(7) by striking out ". Action" in paragraph (1) thereof and substituting "; action"; and

(8) by striking out "proper. The" in paragraph (2) thereof and substituting "proper; the".

(b) Such section 7006 is further amended by adding the following new subsection (b) at the end thereof:

"(b) REVIEW OF CERTAIN ACTIONS UNDER SECTIONS 3005 AND 3006.—Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 3005, or (2) in



granting, denying, or withdrawing authorization or interim authorization under section 3006, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Such review shall be in accordance with sections 701 through 706 of title 5 of the United States Code."

SEC. 28. Section 7009 of the Solid Waste Disposal Act is amended by striking out "unless the Secretary" and substituting "unless the Administrator".

SEC. 29. Section 8002 of the Solid Waste Disposal Act is amended by—

(1) by striking out the last sentence of subsection (f) of such section and inserting in lieu thereof the following: "Not later than thirty-six months after the date of the enactment of the Solid Waste Disposal Act Amendments of 1980 the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives."; and

(2) by inserting the following new subsections after subsection

(1) and by redesignating subsection (m) as (q):

"(m) DRILLING FLUIDS, PRODUCED WATERS, AND OTHER WASTES ASSOCIATED WITH THE EXPLORATION, DEVELOPMENT, OR PRODUCTION OF CRUDE OIL OR NATURAL GAS OR GEOTHERMAL ENERGY.—(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

"(A) the sources and volume of discarded material generated per year from such wastes;

"(B) present disposal practices;

"(C) potential danger to human health and the environment from the surface runoff or leachate;

"(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate;

"(E) alternatives to current disposal methods;

"(F) the cost of such alternatives; and

"(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

"(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from the date of enactment of the Solid Waste Disposal Act Amendments of 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

"(3) There are authorized to be appropriated not to exceed \$1,000,000 to carry out the provisions of this subsection.

"(n) MATERIALS GENERATED FROM THE COMBUSTION OF COAL AND OTHER FOSSIL FUELS.—The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil fuels. Such study shall include an analysis of—

"(1) the source and volumes of such material generated per year;

"(2) present disposal and utilization practices;

"(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

"(4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved;

"(5) alternatives to current disposal methods;

"(6) the costs of such alternatives;

"(7) the impact of those alternatives on the use of coal and other natural resources; and

"(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view towards avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after the enactment of the Solid Waste Disposal Act Amendments of 1980. Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States

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Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

"(o) CEMENT KILN DUST WASTE.—The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

- "(1) the source and volumes of such materials generated per year;
- "(2) present disposal practices;
- "(3) potential danger, if any, to human health and the environment from the disposal of such materials;
- "(4) documented cases in which danger to human health or the environment has been proved;
- "(5) alternatives to current disposal methods;
- "(6) the costs of such alternatives;
- "(7) the impact of those alternatives on the use of natural resources; and
- "(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view towards avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after the date of enactment of the Solid Waste Disposal Act Amendments of 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

"(p) MATERIALS GENERATED FROM THE EXTRACTION, BENEFICIATION, AND PROCESSING OF ORES AND MINERALS, INCLUDING PHOSPHATE ROCK AND OVERBURDEN FROM URANIUM MINING.—The Administrator shall conduct a detailed and comprehensive study on the adverse effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—

- "(1) the source and volumes of such materials generated per year;
- "(2) present disposal and utilization practices;
- "(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
- "(4) documented cases in which danger to human health or the environment has been proved;
- "(5) alternatives to current disposal methods;
- "(6) the costs of such alternatives;
- "(7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
- "(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite par-

participation by other concerned parties, including industry and other Federal and State agencies, with a view towards avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives."

SEC. 30. Section 3 of the Resource Conservation and Recovery Act of 1976 is hereby repealed.

SEC. 31. (a) Section 2006(a) of the Solid Waste Disposal Act is amended by striking "and" and inserting before the period "\$70,000,000 for the fiscal year ending September 30, 1980, \$80,000,000 for the fiscal year ending September 30, 1981, and \$80,000,000 for the fiscal year ending September 30, 1982".

(b) Section 3011(a) of the Solid Waste Disposal Act is amended by inserting after "1979" the following: "\$20,000,000 for fiscal year 1980, \$35,000,000 for fiscal year 1981, and \$40,000,000 for fiscal year 1982".

(c) Section 4008(a)(1) of the Solid Waste Disposal Act is amended to read as follows:

"(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978, \$40,000,000 for fiscal year 1979, \$20,000,000 for fiscal year 1980, \$15,000,000 for fiscal year 1981, and \$20,000,000 for fiscal year 1982 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subtitle (other than the provisions of such plans referred to in section 4003(b), relating to feasibility planning for municipal waste energy and materials conservation and recovery)."

(d) Section 4008(a)(2)(C) of the Solid Waste Disposal Act is amended by adding at the end thereof: "There are authorized to be appropriated \$10,000,000 for fiscal year 1980, \$10,000,000 for fiscal year 1981, and \$10,000,000 for fiscal year 1982 for purposes of this paragraph."

(e) Section 4009(d) of the Solid Waste Disposal Act is amended by adding at the end thereof: "There are authorized to be appropriated \$10,000,000 for the fiscal year 1980 and \$15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section."

(f)(1) Subtitle E of the Solid Waste Disposal Act is amended by adding the following new section:

#### "AUTHORIZATION OF APPROPRIATIONS

"SEC. 5006. There are authorized to be appropriated to the Secretary of Commerce \$5,000,000 for each of fiscal years 1980, 1981, and 1982 to carry out the purposes of this subtitle."

(2) The table of contents for such subtitle E is amended by adding the following new item at the end thereof:

"Sec. 5006. Authorization of appropriations."

## ENERGY AND MATERIALS CONSERVATION AND RECOVERY

SEC. 32. (a) The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

(3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

(4) the technology to conserve resources exists and is commercially feasible to apply;

(5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

(6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.

(b) Section 4001 of the Solid Waste Disposal Act (relating to objectives) is amended by inserting "including energy and materials which are recoverable from solid waste" after "valuable resources".

(c) Section 4002(c) of the Solid Waste Disposal Act (relating to guidelines for State plans) is amended in paragraph (11) by inserting after "recovered material" the following: "and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy".

(d)(1) Section 4003 of the Solid Waste Disposal Act is amended by inserting "negotiating and" after "from" in paragraph (5) thereof and by adding the following before the period at the end thereof: "or for conserving materials or energy by reducing the volume of waste".

(2) Section 4003 of the Solid Waste Disposal Act (relating to minimum requirements for State plans) is amended by inserting "(a) MINIMUM REQUIREMENTS.—" after "4003" and by adding the following new subsection at the end thereof:

"(b) ENERGY AND MATERIALS CONSERVATION AND RECOVERY FEASIBILITY PLANNING AND ASSISTANCE.—(1) A State which has a plan approved under this subtitle or which has submitted a plan for such approval shall be eligible for assistance under section 4008(a)(3) if the Administrator determines that under such plan the State will—

"(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste,

"(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conserva-

tion of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

"(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

"(D) coordinate the resource conservation and recovery planning under subparagraph (C).

"(2) The analysis referred to in paragraph (1)(A) shall include—

"(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste,

"(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources,

"(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation,

"(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

"(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

"(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized."

(e)(1) Section 4003(a)(2)(B) of such Act is amended by adding the following at the end thereof: "Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques."

(2) Section 4003(a) of such Act is amended by adding the following new paragraph at the end thereof:

"(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$4,000,000 for purposes of making grants to States to carry out section 4003(b). No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

"(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 4003(b). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, start-up or operation activities.

"(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 4003(b)(1)(A) and (B)."

(3) Section 4008 of such Act is amended by adding the following new subsection at the end thereof:

"(f) ASSISTANCE TO MUNICIPALITIES FOR ENERGY AND MATERIALS CONSERVATION AND RECOVERY PLANNING ACTIVITIES.—(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 4003(b)(1). Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subtitle or any other appropriate planning carried out by the State.

"(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter."

"(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities."

(f) Section 4008(d) of the Solid Waste Disposal Act is amended by inserting "(1)" after "TECHNICAL ASSISTANCE.—" and by adding the following new paragraph at the end thereof:

"(2) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

"(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

"(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

"(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities."

(g) Section 6003 of the Solid Waste Disposal Act is amended to read as follows:

"COOPERATION WITH THE ENVIRONMENTAL PROTECTION AGENCY

"SEC. 6003. (a) GENERAL RULE.—All Federal agencies shall assist the Administrator in carrying out his functions under this Act and

shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

"(b) INFORMATION RELATING TO ENERGY AND MATERIALS CONSERVATION AND RECOVERY.—The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible; and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) in carrying out this subsection."

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

SEC. 33. (a)(1) There is hereby established in the executive branch of the United States the National Advisory Commission on Resource Conservation and Recovery, hereinafter in this section referred to as the "Commission".

(2) The Commission shall be composed of nine members to be appointed by the President. Such members shall be qualified by reason of their education, training, or experience to represent the view of consumer groups, industry associations, and environmental and other groups concerned with resource conservation and recovery and at least two shall be elected or appointed State or local officials. Members shall be appointed for the life of the Commission.

(3) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) Five members of the Commission shall constitute a quorum for transacting business of the Commission except that a lesser number may hold hearings and conduct information-gathering meetings.

(5) The Chairperson of the Commission shall be designated by the President from among the members.

(6) Upon the expiration of the two-year period beginning on (A) the date when all initial members of the Commission have been appointed or when (B) the date when initial funds become available to carry out this section, whichever is later, the Commission shall transmit to the President, and to each House of the Congress, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

(7) The Commission shall submit an interim report on February 15, 1982 and the Commission may also submit, for legislative and administrative actions relating to the Solid Waste Disposal Act, other interim reports prior to the submission of its final report.

(8) The Commission shall cease to exist 30 days after submission of its final report.



*(b) The Commission shall—*

*(1) after consultation with the appropriate Federal agencies, review budgetary priorities relating to resource conservation and recovery, determine to what extent program goals relating to resource conservation and recovery are being realized, and make recommendations concerning the appropriate program balance and priorities;*

*(2) review any existing or proposed resource conservation and recovery guidelines or regulations;*

*(3) determine the economic development or savings potential of resource conservation and recovery, including the availability of markets for recovered energy and materials, for economic materials savings through conservation, and make recommendations concerning the utilization of such potential;*

*(4) identify, and make recommendations addressing, institutional obstacles impeding the development of resource conservation and resource recovery; and*

*(5) evaluate the status of resource conservation and recovery technology and systems including both materials and energy recovery technologies, recycling methods, and other innovative methods for both conserving energy and materials extractable from solid waste.*

*The review referred to in paragraph (1) should include but not be limited to an assessment of the effectiveness of the technical assistance panels, the public participation program and other program activities under the Solid Waste Disposal Act.*

*(c)(1) Members of the Commission while serving on business of the Commission, shall be compensated at a rate not to exceed the rate specified at the time of such service for grade GS-16 of the General Schedule for each day they are engaged in the actual performance of Commission duties, including travel time; and while so serving away from their homes or regular places of business, all members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.*

*(2) Subject to such rules as may be adopted by the Commission, the Chairperson, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power to—*

*(A) appoint a Director, who shall be paid at a rate not to exceed the rate of basic pay for level I, GS-16 of the General Schedule; and*

*(B) appoint and fix the compensation of not more than 5 additional staff personnel.*

*(3) This Commission is authorized to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-16 in section 5332 of such title. Experts and consultants may be employed without compensation if they agree to do so in advance.*

(4) Upon request of the Commission, the head of any Federal agency is authorized to detail on reimbursable or nonreimbursable basis any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section.

(5) The Commission is exempt from the requirements of sections 4301 through 4308 of title 5, United States Code.

(6) The Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties and responsibilities.

(7) In order to expedite matters pertaining to the planning for, and work of, the Commission, the Commission is authorized to make purchases and contracts without regard to section 252 of title 41 of the United States Code, pertaining to advertising and competitive bidding, and may arrange for the printing of any material pertaining to the work of the Commission without regard to the Government Printing and Binding Regulations and any related laws or regulations.

(8) The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(9) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties and functions. Upon request of the Chairperson, the head of any such Federal agency shall furnish such information to the Commission subject to applicable law.

(10) Financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the General Services Administration for which payment shall be made in advance, or by reimbursement, from funds of the Commission, in such amounts as may be agreed upon by the Chairperson of the Commission and the Administrator of General Services.

(d) In carrying out its duties under this section the Commission, or any duly authorized committee thereof, is authorized to hold such hearings and take testimony, with respect to matters to which it has a responsibility under this section as the Commission may deem advisable. The Chairperson of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(e) From the amounts authorized to be appropriated under the Solid Waste Disposal Act for the fiscal years 1981 and 1982, not more than \$1,000,000 may be used to carry out the provisions of this section.

And the House agree to the same.  
That the House recede from its amendment to the title of the bill.

HARLEY O. STAGGERS,  
J. J. FLORIO,  
JIM SANTINI,  
BARBARA A. MIKULSKI,  
JOHN M. MURPHY,  
ROBERT T. MATSUI,  
EDWARD MADIGAN,  
GARY A. LEE,

*Managers on the Part of the House.*

JENNINGS RANDOLPH,  
LLOYD BENTSEN,  
JOHN CULVER,  
ROBERT T. STAFFORD,  
JOHN H. CHAFEE,

*Managers on the Part of the Senate.*

TESTIMONY FOR  
ASSEMBLY BILL 196

Assembly Bill 196 was proposed by the Department of Conservation and Natural Resources for the management of hazardous wastes. The hazardous wastes this bill proposes to manage are not radioactive wastes but those industrial chemical wastes generated within the State, those transported through the State and those treated, stored and disposed of in the State. The bill provides for a program to protect the public health and the environment from the improper management of hazardous waste. Another purpose of this legislation is to provide the State with the authority to develop a hazardous waste management program to replace the Federal program.

The Federal program was developed by U.S. Environmental Protection Agency under the authority of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580). That act requires the EPA to establish and implement a hazardous waste management program in every State. It also provides for the delegation of the program to a State, if the State demonstrates it has the equivalent authority to regulate hazardous waste. A.B. 196 provides that authority.

The Federal program manages hazardous waste from "cradle to grave" or from the point of generation to the waste's ultimate disposal. The program requires the use of a manifest to track and ensure that the waste gets from the generator to the disposer. The program requires the generator to package and label his waste properly and to report waste quantities generated and shipped. Transporters are required to comply, as a minimum, with U.S. Department of Transportation requirements and the manifesting requirements. The treatment, storage and disposal facilities must also meet certain requirements in order to receive a permit. These requirements include treatment efficiencies, storage facility design and operation, and disposal facility maintenance and operation procedures, including financial responsibility.

In order for a State to assume the responsibility for the hazardous waste program, it must have the legislative authority to manage hazardous waste to the degree the Federal program does. The authorization must provide for the following:

- (1) The State program must control hazardous waste generated, transported, treated, stored and disposed of in the State. The State must be able to identify and list hazardous wastes.
- (2) The State program must cover all generators of hazardous wastes and require them to comply with reporting and recordkeeping requirements. Generators who accumulate hazardous wastes for short periods prior to shipment are required to do so in a manner that does not present a hazard to human health or the environment. Generators must be required to use a manifest system to ensure that

off-site shipments of hazardous wastes go to authorized facilities. The manifest system must require that the manifest identify the generator, transporter, designated facility and the hazardous waste being transported, that the manifest accompany all off-site shipments, and that the generator report any shipments not delivered to the designated facility.

- (3) The State program must cover all transporters of hazardous waste, requiring them to comply with certain recordkeeping requirements. Transporters must be required to use the manifest system that ensures the delivery of wastes to the proper facilities. Transporters must be required to respond and clean-up any spills or unauthorized discharge they cause.
- (4) The state must have standards applicable to treatment storage and disposal facilities and prohibit the operation of such facilities not in compliance. The standards must include:
  - (A) Preparedness for and prevention of releases of hazardous waste and contingency plans and emergency procedures to be followed in the event of a release of such waste;
  - (B) Closure and post-closure requirements;
  - (C) Groundwater monitoring;
  - (D) Security;
  - (E) Facility personnel training;
  - (F) Inspection, monitoring, recordkeeping, and reporting
  - (G) Compliance with the manifest system; and
  - (H) Other standards necessary to protect the interests of the State.
- (5) The State must have the following enforcement authority to remedy violations of the State program requirements:
  - (A) Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;
  - (B) To sue in courts of competent jurisdiction, to enjoin any threatened or continuing violation of any program requirement; and

- (C) To assess or sue to recover in court civil penalties in at least the amount of \$1,000 per day and to seek criminal fines in at least the amount of \$1,000 per day.
- (6) The State must have the authority and resources to establish and implement procedures to investigate for possible enforcement activities.
- (7) The State must establish a permit system for treatment, storage and disposal facilities and be able to prohibit their operation without a permit.

Several questions should be answered at this point. What kind, how much and how are hazardous waste managed now in Nevada? Because EPA's program is in effect, the following data is the result of our analysis of EPA's data.

When EPA initiated their program, they notified all of the Nevada industries and businesses which EPA believed were involved with hazardous wastes that the industries had to register with them. One hundred seventy six responded; 170 generators, 78 transporters and 15 treatment, storage and disposal facilities. EPA's data is incomplete. In order to fully define the hazardous wastes in Nevada, each company that responded to EPA, as well as many who did not, needs to be contacted to determine exactly what they generate, where it is disposed of and how. A listing of those industries responding to EPA has been prepared and is available for this committee. The Department received a grant from EPA to complete and verify this data and better define the wastes generated in Nevada, but the budget augmentation was not approved by Interim Finance.

Mining operations and most agricultural activities are temporarily exempted from EPA's regulations until studies concerning the hazards of those wastes are determined.

Totaling the data submitted to EPA by the Nevada industries on the hazardous waste they generate, 937,000 tons are produced annually. More than 90 percent is generated in Southern Nevada at the BMI complex. The remaining 10 percent is generated by small facilities scattered throughout Nevada. The disposal of some of these wastes is uncontrolled in landfills, sewers and on the ground. Wastes disposed of on their own property amount to 916,000 tons annually. 11,000 tons are disposed of out-of-state and only 10 tons goes to the State owned disposal site at Beatty. In addition to the State's wastes, the Beatty site receives only 728 tons of wastes from other States. None of these figures include cyanide and other hazardous wastes from the mining industry. Of the few mines reporting to EPA, they indicated that they were generating 5.5 million tons per year. The hazardous waste, other than radioactive waste, generated at the Nevada Test Site is not included nor is it known. Potential MX hazardous wastes are not known at this time.

Assembly Bill 196 with the suggested amendments would provide the State with the necessary authority to develop its own program in order to replace the Federal program. The Bill will cover all the issues previously discussed.

Questions have been raised on how the program will be developed, what the resources are, and what are the enforcement policies. The legislation, as proposed, is somewhat general, providing for the regulation of all activities involving hazardous waste. This is proposed so that as the Federal program regulates, or does not regulate, certain activities the State can likewise respond. The Department will hold workshops with industry and the public to develop the necessary regulations which are required to be adopted by the State Environmental Commission after public hearings and, of course, reviewed by the interim legislative committee.

The funding available to develop and implement the program comes from the U.S. EPA. The Department will match the Federal funding at a rate of 25% State and 75% Federal with the existing State waste management budget. While some environmental programs' funding has been reduced by the Reagan Administration, the hazardous waste funding has been increased.

The Department's enforcement philosophy is a commitment to enforcing the provisions of the State's environmental laws and regulations in the most efficient manner to achieve the best environmental conditions possible, consistent with the social and economic needs of the people of Nevada. When an industry is in violation of a law or regulation every reasonable effort is made, and opportuntiy provided, to achieve compliance by some activity (voluntary compliance) less than a formal enforcement action (seeking court penalties). These activities range from a field engineer advising facility personnel that an enforcement action may be filed if expeditious compliance is not achieved, to voluntary compliance conferences, to the issuance of orders, to hearings before the State Environmental Commission or the Department Director, to file civil or criminal actions in a State court.

This testimony has attempted to summarize the hazardous waste issue in Nevada and proposes a program to manage these wastes with a program designed for the specific needs of Nevada and its industries. With such a law the State can control the establishment of private off-site storage and disposal facilities. The alternative to a State program would be the impersonal, mandatory, regulatory enforcement by a distant Federal agency, where there will be no local accountability. The Department urges your favorable consideration.

In the Matter of the )  
Proposed Hazardous Waste )  
Regulations )  
Noticed for Public Hearing )  
May 13, 1980 )

STATEMENT

My name is Frank Luchetti. I am an Environmental Specialist for Sierra Pacific Power. Our business address is P. O. Box 10100, Reno, NV.

Review of the proposed Hazardous Waste Regulations suggests that Sierra may be a hazardous waste generator, transporter, storer, and disposer.

Sierra supports a statewide hazardous waste program. Sierra does not, however, support these proposed hazardous regulations. The proposed regulations are intended to be an equivalency document to federal programs as allowed under the Resource Conservation Recovery Act. In their present form, however, they consist of a conglomerate of draft and final EPA regulations as well as Division of Environmental Protection interjections. The proposed regulations do not consider meteorologic and geologic characteristics of the state. Failure to recognize these unique characteristics has led to a set of regulations which are unwarranted and unduly restrictive in nature.

Unlike other federal environmental programs delegated to the state, it is not necessary that the State Hazardous Waste Program duplicate federal regulations. State programs must only demonstrate "equivalency" to the federal program. Equivalency can be demonstrated in two ways.

The regulations may duplicate the federal regulations in their entirety. This option is really no different than the federal program. The only difference is that the federal regulations would be implemented and enforced by state



personnel. This option is unsatisfactory as it does not allow for unique concerns and conditions within the State of Nevada.

The regulations may be equivalent to the federal program. This option is the most difficult to achieve. However, under this option the regulated community within the state becomes involved in the regulation development. This option promotes an exchange of ideas, suggestions, and proposals which are necessary to regulate and control the handling, transport, storage and disposal of hazardous waste in a cost-effective, environmentally sound manner.

The Division of Environmental Protection staff is to be commended for their efforts in attempting to provide equivalency for these regulations. However, in their present form they are in need of a great deal of work. Sierra, therefore, requests that action on these regulations be postponed until after workshops with interested parties and discussions with local communities have been held and a more polished set of regulations are available for presentation before this Commission. Sierra Pacific Power Company looks forward to working with the Division of Environmental Protection staff in developing these hazardous waste regulations which are <sup>should</sup> not <sup>be</sup> a mirror image of the federal program.

Thank you.

**LAW ENGINEERING TESTING COMPANY***Geotechnical and Materials Engineers*

109 INVERNESS DRIVE EAST / SUITE WEST B / ENGLEWOOD, COLORADO 80110 / (303) 771-8541

James L. Grant, Ph.D.

GEOLOGIC AND HYDROLOGIC SUMMARYBEATTY, NEVADA LOW-LEVEL RADIOACTIVE WASTE DISPOSAL SITEHistory of Investigations at the Site

Geologic and hydrologic conditions at the Beatty facility have been investigated by consultants acting on behalf of US Ecology (formerly Nuclear Engineering Company) and by the U.S. Geological Survey. Initial investigations were completed in the early 1960's prior to the licensing of the site. In the late 1970's, the U.S. Geological Survey began a comprehensive investigative program at the site which is still in progress. Law Engineering Testing Company and US Ecology have reviewed all USGS data available to date. During the latter part of 1980 and early 1981, Law Engineering Testing Company commenced further technical investigations, the purpose of which is to update the known geotechnical and hydrologic conditions at the site in order to evaluate different proposed methods of trench construction.

Site Geology and Hydrology

The US Ecology, Inc. site is located in the Amargosa Desert which occupies the broad, linear valley between Bare Mountain and the Amargosa Mountain Range. The site is on the north side of the valley near the indistinct boundary between the coalescing alluvial fans of the bajada and the desert flat which occupies the lowest part of the valley. Natural elevations at the site are between 2783 and 2772

feet above sea level. The general topographic trend in the valley is a gradual slope downward toward the southeast. The site occupies a portion of a low southeastward trending hill near the eastern flank of the valley.

The valley-fill deposits which are present at the site are sands, gravels, and cobbles of local origin, primarily volcanics and quartzite, which have been transported to the site by a combination of gravity and movement of water. No distinct boundary exists between bajada or alluvial fan deposits and desert flat deposits. Desert flat materials are a combination of deposits laid down at the bottom ends of alluvial fans, alluvial deposits of valley streams, and lake deposits.

The subsurface of the site can be generalized as follows:

From ground surface to about 110 feet, soils are comprised of sands, gravels and cobbles with varying amounts of clay. Clays become more prevalent below a depth of 110 feet. Ground water at the site is first encountered at a depth of about 320 feet below ground surface. The general direction of flow of ground water of the site is to the southeast along the trend of the valley.

Annual rainfall at the site is approximately four inches and annual potential evaporation is approximately 100 inches. Because of this arid climate, soils at the site are extremely dry, and it is unlikely that recharge to the ground water occurs as a result of infiltration of precipitation falling on the site. Ground water recharge probably is derived from infiltration of runoff from the mountains at the edge of the valley northeast of the site.

Summary

The site is suitable for waste disposal because the arid climate and depth to ground water make the contamination of ground water by the waste extremely unlikely. The environmental safety of the site is enhanced further by the dry condition of the site soils which have the capacity to absorb and render immobile large quantities of fluids before migration to the ground water could occur.

## Comments, brief + concise.

Assembly Bills, 200, 256, & 300 are not good bills and should not be passed. They are very restrictive and negative in their effect upon the progress of society. They reflect a lack of confidence by ~~the~~ people in the integrity and ability of <sup>the</sup> engineering professions and the supporting scientists that develop the data & information needed by ~~the engineering professions~~ to solve these problems of safely disposing of radiological and chemical byproducts, i.e. so-called wastes.

These bills have their origins in the incomplete, <sup>erroneous,</sup> and artful propaganda of the small groups of antimuclear and antitechnological advocates. Their personell and leaders are readily identified and are generally well known, ~~and~~ <sup>but</sup> their influence is waning, although the awareness of the general public of this has not yet begun to emerge. Nuclear phobia has passed its peak, <sup>and</sup> the general public is increasingly realizing that there are many greater risks in our journey through life. These risks are of great concern to the competent engineers and scientists who accept their part in the responsibility of their reduction and, if possible, their elimination.

We are well into the age of beneficial nuclear technology and activities in which matter is transformed for the benefit of people, but never destroyed. Competent and qualified engineers, scientists, and technologists

should be encouraged and supported in their work and not hampered ~~in their work~~ as by the thrust and intent of A.B.'s 200, 250, 300 and similar bills.

Rules and regulations are necessary as guides and are welcome when developed and promulgated with input from the engineering and scientific professions by competent and qualified personnel.

It is possible, and probable, that Nevada can benefit greatly with jobs, taxes, <sup>&</sup> social security from nuclear service installations ~~and activity~~, in the not too distant future and beyond. Geographically and geologically, Nevada possesses great opportunity, ~~for the~~ for the benefit of its people and the people of the United States as a whole. The engineering ~~professions~~, scientific and technological professions have solved many of the past problems which no longer exist and stand ready to solve any and all problems that may arise in the future <sup>from nuclear processing complexes</sup>. With faith in this we can go forward.

Herby Stoddard

1 AN ACT Relating to low-level nuclear waste management; creating CR91A  
 2 a new chapter in Title 43 RCW; and declaring an emergency. G  
 3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON: -36;1

5 NEW SECTION. Section 1. The Northwest Interstate PARTA  
 6 Compact on Low-level Radioactive Waste Management is hereby ;2  
 7 enacted into law and entered into by the state of Washington as 9  
 8 a party, and is in full force and effect between the state and 10  
 9 other states joining the compact in accordance with the terms of 11  
 10 the compact. 11

11 NORTHWEST INTERSTATE COMPACT ON 12  
 12 LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT 13  
 13 ARTICLE I—Policy and Purpose 14

14 The party states recognize that low-level radioactive 15  
 15 wastes are generated by essential activities and services that 16  
 16 benefit the citizens of the states. It is further recognized 16  
 17 that the protection of the health and safety of the citizens of 17  
 18 the party states and the most economical management of low-level 18  
 19 radioactive wastes can be accomplished through cooperation of 18  
 20 the states in minimizing the amount of handling and 19  
 21 transportation required to dispose of such wastes and through 19  
 22 the cooperation of the states in providing facilities that serve 20  
 23 the region. It is the policy of the party states to undertake 21  
 24 the necessary cooperation to protect the health and safety of 21  
 25 the citizens of the party states and to provide for the most 22  
 26 economical management of low-level radioactive wastes on a 22  
 27 continuing basis. It is the purpose of this compact to provide 23  
 28 the means for such a cooperative effort among the party states 24

1 so that the protection of the citizens of the states and the 24  
 2 maintenance of the viability of the states' economies will be 25  
 3 enhanced while sharing the responsibilities of radioactive low- 26  
 4 level waste management. 26

5 ARTICLE II—Definitions 27

6 As used in this compact: 28

7 (1) "Facility" means any site, location, structure, or 29  
 8 property used or to be used for the storage, treatment, or 30  
 9 disposal of low-level waste, excluding federal waste facilities; 31

10 (2) "Low-level waste" means waste material which 32  
 11 contains radioactive nuclides emitting primarily beta or gamma 33  
 12 radiation, or both, in concentrations or quantities which exceed 33  
 13 federal standards for unrestricted release. Low-level waste 34  
 14 does not include waste containing more than ten nanocuries of 35  
 15 transuranic contaminants per gram of material, nor spent reactor 36  
 16 fuel, nor material classified as either high-level waste or 36  
 17 waste which is unsuited for disposal by near-surface burial 38  
 18 under any applicable federal regulations; 38

19 (3) "Generator" means any person, partnership, 39  
 20 association, corporation, or any other entity whatsoever which, 40  
 21 as a part of its activities, produces low-level radioactive 40  
 22 waste; 40

23 (4) "Host state" means the state with a facility to 41  
 24 which low-level waste is shipped for disposal. 41

25 ARTICLE III—Regulatory Practices 42

26 Each party state hereby agrees that it will adopt 43  
 27 practices which will require low-level waste shipments 43  
 28 originating within its borders and destined for a facility 44  
 29 within another party state to conform to the applicable 45  
 30 packaging and transportation requirements and regulations of the 45  
 31 host state. Such practices shall include: 45

32 (1) Maintaining an inventory of all generators within 46  
 33 the state that have shipped or expect to ship low-level waste to 47  
 34 facilities in another party state; 47

35 (2) Periodic unannounced inspection of the premises of 48



1 such generators and the waste management activities thereon; 49

2 (3) Authorization of the containers in which such waste 50

3 may be shipped, and a requirement that generators use only that 51

4 type of container authorized by the state; 51

5 (4) Assurance that inspections of the carriers which 52

6 transport such waste are conducted by proper authorities, and 53

7 appropriate enforcement action taken for violations; 53

8 (5) After receiving notification from a state in which a 54

9 facility is located that a generator within the party state is 55

10 in violation of applicable packaging or transportation 55

11 standards, the party state will take appropriate action to 56

12 assure that such violations do not recur. Such action may 57

13 include inspection of every individual waste shipment by that 57

14 generator. 57

15 Each party state may impose fees upon generators and 58

16 shippers to recover the cost of the inspections and other 59

17 practices under this Article. Nothing in this Article shall be 59

18 construed to limit any party state's authority to impose 60

19 additional or more stringent standards on generators or carriers 61

20 than those required under this Article. 61

21 ARTICLE IV—Regional Facilities 62

22 Section 1. Facilities located in any party state, other 64

23 than facilities established or maintained by individual waste 65

24 generators for the management of their own waste material, shall 65

25 accept low-level waste generated in any party state if such 66

26 waste has been packaged and transported according to applicable 67

27 laws and regulations. 67

28 Section 2. No facility located in any party state may 69

29 accept waste generated outside of the region comprised of the 70

30 party states, except as provided for in Article V. 70

31 Section 3. Until such time as Section 2 takes effect as 72

32 provided in Article VI, facilities located in any party state 73

33 may accept low-level waste generated outside of any of the party 74

34 states only if such waste is accompanied by a certificate of 74

35 compliance issued by an official of the state in which such 75

1 waste shipment originated. Such certificate shall be in such 76  
2 form as may be required by the party state in which the facility 76  
3 is located, and shall contain at least the following: 77  
4 (1) The generator's name and address; 78  
5 (2) A description of the contents of the waste 79  
6 container; 79  
7 (3) A statement that the waste being shipped has been 80  
8 inspected by the official who issued the certificate or by his 81  
9 agent or by a representative of the United States Nuclear 81  
10 Regulatory Commission, and found to have been packaged in 82  
11 compliance with applicable federal regulations and such 82  
12 additional requirements as may be imposed by the destination 83  
13 state; 83  
14 (4) A binding agreement by the state of origin to 84  
15 reimburse any party state for any liability or expense incurred 85  
16 as a result of an accidental release of such waste during 85  
17 shipment or after such waste reaches the facility. 86  
18 Section 4. Each party state shall cooperate with the 83  
19 other party states in determining the appropriate site of any 89  
20 facility that might be required within the region comprised of 89  
21 the party states, in order to maximize public health and safety 90  
22 while minimizing the use of any one party state as the host of 91  
23 such facilities on a permanent basis. Each party state further 91  
24 agrees that decisions regarding waste management facilities in 92  
25 their region will be reached through a good faith process which 92  
26 takes into account the burdens borne by each of the party states 93  
27 as well as the benefits each has received. 93  
28 Section 5. The party states recognize that the issue of 95  
29 hazardous wastes is similar in many respects to that of 95  
30 radioactive wastes and agree that there are advantages in using 96  
31 a regional approach for all hazardous wastes. 96  
32 In consideration of the state of Washington maintaining a 97  
33 facility for the disposal of low-level radioactive wastes, the 98  
34 state of Oregon agrees to maintain its existing site for the 98  
35 disposal of hazardous and chemical wastes. Other party states 99  
36 who may have a hazardous waste site also agree to maintain the 100

1 existence of such sites or other similar facilities. 100

2 Section 6. Any party state with a facility may establish 102

3 a schedule of fees and requirements related to that facility, to 103

4 assure that closure, perpetual care, and maintenance and 103

5 contingency requirements are met, including adequate bonding. 104

6 ARTICLE V--Northwest Low-level Waste Compact Committee 105

7 The governor of each party state shall designate one 106

8 official of that state as the person responsible for 107

9 administration of this compact. The officials so designated 108

10 shall together comprise the Northwest low-level waste compact 109

11 committee. The committee shall meet as required to consider 109

12 matters arising under this compact. The parties shall inform 110

13 the committee of existing regulations concerning low-level waste 111

14 management in their states, and shall afford all parties a 111

15 reasonable opportunity to review and comment upon any proposed 112

16 modifications in such regulations. Notwithstanding any 113

17 provision of Article IV to the contrary, the committee may enter 113

18 into arrangements with states, provinces, individual generators, 114

19 or regional compact entities outside the region comprised of the 115

20 party states for access to facilities on such terms and 115

21 conditions as the committee may deem appropriate. However, it 116

22 shall require a two-thirds vote of all such members, including 116

23 the affirmative vote of the member of any party state in which a 117

24 facility affected by such arrangement is located, for the 117

25 committee to enter into such arrangement. 117

26 ARTICLE VI--Eligible Parties and Effective Date 118

27 Section 1. Each of the following states is eligible to 120

28 become a party to this compact: Alaska, Hawaii, Idaho, Montana, 121

29 Oregon, Utah, Washington, and Wyoming. As to any eligible 121

30 party, this compact shall become effective upon enactment into 122

31 law by that party, but it shall not become initially effective 122

32 until enacted into law by two states. Any party state may 123

33 withdraw from this compact by enacting a statute repealing its 124

34 approval. 124

35 Section 2. After the compact has initially taken effect 126

1 pursuant to Section 1, any eligible party state may become a 127  
 2 party to this compact by the execution of an executive order by 127  
 3 the governor of the state. Any state which becomes a party in 128  
 4 this manner shall cease to be a party upon the final adjournment 129  
 5 of the next general or regular session of its legislature or 129  
 6 July 1, 1983, whichever occurs first, unless the compact has by 130  
 7 then been enacted as a statute by that state. 130

8 Section 3. Section 2 of Article IV of this compact shall 132  
 9 take effect on July 1, 1983, if consent is given by Congress. 132  
 10 As provided in Public Law 96-573, Congress may withdraw its 133  
 11 consent to the compact after every five-year period. 133

12 ARTICLE VII--Severability 134

13 If any provision of this compact, or its application to 135  
 14 any person or circumstance, is held to be invalid, all other 136  
 15 provisions of this compact, and the application of all of its 137  
 16 provisions to all other persons and circumstances, shall remain 137  
 17 valid; and to this end the provisions of this compact are 138  
 18 severable. 138

19 NEW SECTION. Sec. 2. Section 1 of this act constitutes 140  
 20 a new chapter in Title 43 RCW. 141

21 NEW SECTION. Sec. 3. This act is necessary for the 143  
 22 immediate preservation of the public peace, health, and safety, 144  
 23 the support of the state government and its existing public 144  
 24 institutions, and shall take effect immediately. 144

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