

MEMBERS PRESENT:

Chairman Schofield
Mr. Redelsperger
Mr. Kovacs

MEMBERS ABSENT:

none

GUESTS PRESENT:

See attached guest list

WITNESSES TESTIFYING:

John Vaden, Division of Health
Verne Rosse, Division of Environmental Protection
JoAnne Buehler, U. S. Ecology, Inc.
Ace Martelle, Department of Human Resources
Bryan M. Nelson, Department of Human Resources, Deputy Attorney
General

STAFF TESTIFYING:

Will Crocket
Sam Hohmann
Frank Daykin

Mr. Schofield convened the meeting at 4:00 P. M. His opening statement addressed the intent of the meeting, which was to consider SB 86, second reprint and the recommendations that were made at the full committee meeting April 7, 1981. The purpose was to try to arrive at a workable measure that could be accepted by the committee as a whole and gain the support of the Assembly. It was important to accomplish this to meet the deadline of April 17 when the 120 day emergency regulation procedures that have been followed to date are ruled moot. This will enable the Department of Human Resources to adopt regulations, by legislative action, to protect the health and safety of the people of Nevada from low level radio active waste.

Mr. Schofield, continuing, said there were two places in the bill that referred to chemical hazardous waste that will remain in the bill until the subcommittee amends AB 196 relative to the hazardous and chemical wastes regulations.

Ace Martelle, Director of Human Resources, reporting on the Department of Health Board meeting of April 8, said the Health Board approved the third party inspection system. They tentatively adopted procedures subject the Department of Human Resources conducting a formal meeting in the interim with generators, interested parties, and U.S. Ecology, Inc. to discuss potential modification to the procedures.

The handbook as presented by NIS is not a part of the procedures. That handbook was nothing more than a guide but it was felt that it might be interpreted as procedures and therefore was not adopted.

There was a set of procedures adopted in lieu of the handbook, "Audit Guidelines" that were formulated by Nevada Inspection Services; there were also changes to the original procedures submitted to the Board by Bryan Nelson that were adopted.

Bryan Nelson, Deputy Attorney General said that when the legislature is in session the Legislative Counsel Bureau cannot review the regulations so they are adopted legally on a temporary basis. The adopted changes referred to by Mr. Martelle are temporary until approved by the LCB and become permanent regulations.

Mr. Kovacs questioned a number of the provisions of the contract between the Department of Human Resources and U. S. Ecology, Inc., the company that controls the Beaty dump site.

Mr. Martelle, Mr. Nelson and members of the committee, along with Ms. Buehler spent some time discussing the contract.

SB 86 - Provides for regulations of transport and disposal of radioactive chemical and other hazardous materials.

Mr. Schofield said that the testimony heard at the full committee meeting concerned the insertion of an amendment proposed by U. S. Ecology, Inc., and no one had objected. He invited comments pertaining to information exchanged between Mr. Martelle's Division, committee and staff. (Proposed amendment - EXHIBIT I)

Mr. Martelle responded that Mr. Daykin had advised against additional language suggested for paragraph 3.1. The existing language was clear and the proposed change would create problems in eight or nine other areas of the measure. Mr. Daykin had also advised against another proposed amendment, a request by mining interests that would exclude certain areas of mining activity from the definition of "radioactive waste". (EXHIBIT II). The advise was based on his opinion that nothing in SB 86 would have any adverse impact on the mining industry.

Mr. Martelle added that Mr. Daykin had further stated the amendment proposed by Mr. Robert Warren (EXHIBIT II) was redundant and could in itself create problems. There is a specific statute that deals with mill tailings, which would control.

Mr. Bob Warren, Nevada Mining Association, Inc., said he would still prefer the amendment to deter persons who might not understand the measure, but would abuse SB 86. He feared the movement of mine waste, rock and tailings may be restricted, particularly interstate transportation. He cited a case of gross abuse of a legislative measure by a regulatory agency far beyond the intent of the legislators. Even when the law is clear there can be interpretations negative to the mining industry. They would very much like to have their proposed language (EXHIBIT II) inserted in the bill. This language is contained in Oregon legislation that controls radioactive waste.

Mr. Martelle said he objected to the proposed change until his division had an opportunity to review the language change.

Mr. John Vaden, Division of Health, added that by-product material waste was accepted at the Beaty site as well as tailings. It is radioactive waste if it comes into that site regardless of its origin. By-product material does include tailings.

Will Crocket, Legislative legal staff, presented an informal document to the committee, EXHIBIT III. Addressing the exhibit he said the question was asked if the State of Nevada could require another state to inspect a shipment before it commenced transport to Nevada for disposal. Nevada's jurisdiction stops at the Nevada State border. They cannot command another state. The written note contains suggested language for involving other state agencies at the point of origin in inspection.

Mr. Martelle advised they would need to increase their staff by 10 or 12 persons to accomplish inspection of every shipment that comes into the state. There are now only three states with radioactive dump sites and other states would not have inspectors qualified to insure safe shipments of material.

Mr. Vaden commented there were 26 states that have agreements with NRC and are required to have expertise. The other 24 have varying degrees of expertise.

Mr. Redelsperger asked if four inspections per year of each entity using the dump site were sufficient.

Mr. Martelle replied any shipper guilty of violations was subject to as many inspections as were deemed necessary, up to 100%.

Mr. Redelsperger questioned the cost feasibility of 100% inspections and Mr. Martelle replied that the cost was not their concern, the quality of the shipments were. He prefers to maintain control rather than delegating the authority for inspection to states of origin of waste material.

Mr. Schofield announced Mr. Daykin was now present and would speak on the mining amendment. (EXHIBIT II)

Mr. Daykin said that it did not seem to him that radioactive waste in its normal meaning would include ore. It would not include overburden unless the overburden were radioactive. Tailings or by-products would not be within the definition of the term. Mill waste might be radioactive and if so would not be excluded from the provisions of SB 86. To the extent that of the products have a value they are not waste and it would not be necessary in the law to emphasize that fact by stating it.

Mr. Vaden explained that radioactive waste is what the person says it is. That is the only definition. It is when a person says "this is waste". On that basis they have taken tailings and by-product

material into the site as radio active waste. There is another bill before the legislature on uranium tailings which are classified as by-product material, they will have to be burried as radioactive material at the site of the mill.

Mr. Warren reiterated that unless this language would cause the bill to fail, or is unconstitutional, he would like it in the bill for the following reason. There have been strong efforts launched in various states to ban all activities having to do with nuclear energy. In western states there is a strong movement underway to ban mining and milling processes of uranium ores. In Oregon this last session an initiative petition failed but passed in Montana to prohibit the process of milling of radioactive ores. In Nevada there is at least five potential discoveries, one of which is ready to go into production. They want to be able to move ores across the borders of Nevada to be processed. The language he has proposed was accepted in Oregon to exclude mine tailings, overburdens and mine by-products. The terms could be subjected to various interpretations.

Mr. Daykin advised any distortion of the English language which is unnecessary is undesirable in legislation. Waste is something one discards. It is unnecessary and perhaps detrimental to elaborate by saying that "these things" are not waste. When one specifies what is not waste then trouble is invited. Persons who wish to make trouble will look for what is not named and declare that as waste. He added that by-product materials which have been previously mentioned are covered and the disposal also of tailings and mill waste wherever they are radioactive is covered in the existing law.

Mr. Warren emphasized they were addressing transportation of the waste products. They wish to insure they can transport across state lines the mine by-products.

Mr. Daykin stressed the language in SB 86 was already clear, more so without the elaboration suggested by Mr. Warren's proposed amendment.

Mr. Vaden said that DOT regulations provided for the transport of bulk ore, in boxcars and motor vehicles, with no requirements for special packaging.

Mr. Warren stated the absence of support from the staff for his amendment made him apprehensive because of the uncertainty they have to face in the future. They may have to engage in an unnecessary defense for the sake of protection of purity of language.

Mr. Daykin's position was unchanged, adding any attempt to clarify the term "radioactive waste" would probably only obscure the term.

Mr. Warren requested those in authority in the matter state for the record that SB 86 does not intend to apply to mine waste or mine ores and these are excluded.

Mr. Martelle said they would not make such a statement. Future **396**

conditions were too uncertain.

Mr. Bryan Nelson added that each situation was a factual determination as to whether it is waste or not and that is based on the intent of the persons who attempt to dispose of it.

Mr. Martelle commented he would make this statement for the record: "We certainly are not after the mining industry nor do we want to get involved in it."

Mr. Redelsperger indicated he would like to accommodate Mr. Warren by adding language that would make him more comfortable.

Mr. Vaden added that even should mine by-products, tailings and overburdens some time in the future be classified as radioactive they could still be transported in open trucks anywhere, by the regulations of the DOT.

Mr. Martelle said if the mine material were to come to Beaty for disposal it would then require inspection, proper packaging and third party inspections.

Mr. Warren was still uncomfortable with the existing language in SB 86 reiterating fears expressed earlier. He added a floor amendment may be attempted to accomplish his endeavor. The resistance to what he expressed as a simple amendment, concerned him greatly. He feared implementation of the provision by regulatory agencies beyond their authority and beyond the intent of the legislature.

Mr. Martelle said his agency did not object to the amendment. The problem was that expressed by Mr. Daykin.

It was the concensus of opinion of staff and subcommittee members that the language requested by Mr. Warren may be more detrimental than advantageous to the mining industry.

Mr. Schofield announced that the suggestion by U. S. Ecology, Inc., EXHIBIT I, would now be considered.

JoAnne Buehler, U. S. Ecology, Inc., explained their concern with section 3, subsections 1 and 2, related to the fact there are certain pieces of operation equipment that are used both for company and personal purposes such as company vehicles. Under this language if strictly interpreted they could be prohibited from removal from the enclosed or limited area of the facility. They believe the existing language could also create a conflict in terms of repackaging and returning material that arrived at the site improperly packaged. The measure states that company people could be subject to fine if material is removed from the enclosed area. They would like clarification of the language indicating that if the health division does give permission or direction to remove such material, they are then exempt from fines.

Mr. Daykin said a company truck driven on the dump site and then driven home by the operator, at company option was a legitimate reason for the health department to permit the use of certain vehicles both on and off the dump site. As long as it were not objectional from a safety standpoint, there would be no reason not to provide an exception for it in the law.

Mr. Martelle said the health division was being involved and they did not have the personnel at the site to implement the authorization.

Ms. Buehler said they would like an amendment to the license or a specific authorization from the state that says particular vehicles can be removed for specified purposes.

Mr. Martelle said the one person on the site was delegated little authority. He added they would cooperate but could not be in a position of immediately issuing authorizations.

Mr. Schofield suggested incorporating this in the licensing agreement. Ms. Buehler said that if the legislature interpreted the statute that nothing could be removed, without exceptions, the licensing agreement could be in conflict with the legislation.

Mr. Schofield stated the legislation was intended to prevent abuses by employees of removal for personal projects such as equipment as backhoes and other earth moving equipment.

Mr. Nelson said, for clarification, there were two different situations. One situation involves the personal use of equipment and the other includes removal of waste as well. Applying one statement to both situations was not appropriate.

Mr. Redelsperger asked under what conditions would waste be removed from the site that would require authorization.

Ms. Buehler said the only time waste would be removed would be when it was being returned because of improper packaging at the direction of the health division.

It was the opinion of the committee and Human Resources personnel that the matter of removing particular vehicles could be handled under regulations and licensing agreement.

It was agreed by members of the committee, legal staff, and Human Resources personnel to insert, on line 24, page 2, after "or": "without prior written authorization from the health officer"

At the suggestion of Mr. Daykin, on page 1, line 15, the period after "brokers" was deleted and a "comma" added; following that the words "and their shipments" were added.

Mr. Schofield directed attention to page 6 lines 29 through 30, and it was decided to leave the material untouched.

All parties were of the opinion that penalties for improper packaging of radioactive waste material were too lenient to discourage violations and therefore should be increased.

Line 7, page 2, was amended to read "not more than \$2500 per violation, or if not licensed, he is guilty of a misdemeanor." This action was taken to better insure compliance with the statute.

The committee examined SB 86 item by item, page by page.

Mr. Schofield stated the subcommittee would report back to the committee with the amendments, the recommendations of the subcommittee that this bill do pass as amended by the subcommittee. He hoped the bill would be declared an emergency measure and voted upon as an emergency. They would try to have it sent to the Senate on Tuesday or Wednesday. Hopefully it will be on the Governor's desk by Thursday.

Mr. Kovacs said he felt the contract between U. S. Ecology, Inc. and the Health Division was too permissive. He also questioned the NIS role in the scheme.

Mr. Schofield said the committee was interested as representatives of the people in tightening control of a situation that has created a tremendous public disapproval.

Mr. Martelle said "I will guarantee that I will address the entire contract and in just exactly those terms....it is my intent to make it as tough as I can. I will address the contract from front to back."

Mr. Schofield commented that in the committee they may have to possibly add a subsection, as suggested by Mr. Warren, that may be redundant but may be necessary to insure passage.

It was agreed Mr. Martelle would participate in the wording if the subsection were added and he would not object if it did not effect the intent of the measure.

Mr. Schofield recapped the three proposed amendments.

He moved to amend by adding on line 16, page 1, "and their shipments." motion carried unanimously.

Mr. Schofield moved to amend SB 86 by deleting "\$500." and adding "\$2500 per violation" on page 2, line 7. Motion carried unanimously.

The third amendment is to add on line 24, page 2, after "or" "without prior written authorization from the state health officer" Mr. Schofield, Mr. Redelsperger voted in favor of the amendment. Mr. Kovacs voted "no".

A motion by Mr. Schofield to make a recommendation to the committee from the subcommittee to accept the three amendments relative to SB 86 and further recommend that the bill be amended by the full committee and do pass. Mr. Schofield and Mr. Redelsperger were in favor. Mr. Kovaces was in favor with the exception of third amendment.

Meeting adjourned at 7:00 P. M.

Respectfully submitted,



Marjorie D. Robertson
Secretary

S.B. 86 second reprint suggested language from
US Ecology 9 April 1981

Please note there is a conflict of language between
section 2.1, lines 6 - 9 and section 3.1 as written in the
second reprint of S.B. 86. Our suggested language will solve
this problem as well as other matters previously discussed.

Sec. 3.1

LINE 26

. . . . area where the waste is buried, without proper
authorization from the Health Division and exit survey,
~~shall be punished~~

AMENDMENT

Amendment to SB 86 - Transport, disposal of radioactive waste.

"...radioactive waste does not mean mine ore, ~~or~~ overburden, ~~or~~ mill waste, ~~or~~ tailings, or by-product materials as these terms are defined in Title 42 USC, Section 2014."

April 9, 1981

Assemblyman Redelsperger:

RE: Requiring inspection of out-of-state radioactive waste by such a state before shipment. (S.B. 86)

This state's jurisdiction stops at the border. Because of this, and the principle of comity, Nevada may not require another state to inspect radioactive waste before shipment. But in Dean Milk Co. vs. City of Madison, 340 U.S. 349 (1951), the U.S. Supreme Court held that the city could charge the actual and reasonable cost of milk inspections of out-of-state milk producers conducted by the city's inspectors.

In lieu of requiring another state to inspect packages and documents, you could make state inspection an alternative to a shipper's paying for the cost of an inspection by Nevada or third party inspectors. For example, you could amend Section 2, page 1, after line 16, by inserting:

"3. A licensed shipper or broker must obtain an inspection of each shipment of such waste before beginning to transport it for disposal in Nevada. The inspection must be performed by an inspector of:

(a) The health division or by a third party authorized by the division to perform such inspections; or

(b) The state agency which regulates such waste in the state where the shipment originates."

The shipper or broker is responsible for paying for the actual and reasonable cost of such inspections.

Also, amend Section 2, page 1, after line 18, by inserting:

"(b) Which has not been inspected before shipment as provided in subsection 3".

This would fulfill your objective of inspection before shipment without requiring another state to perform it".

Will Crocket