

Original sponsor: Kerttula

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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 29 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to hazardous wastes and to nuclear  
7 and radioactive facilities and materials; and providing  
8 for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 18.45 is amended by adding a new section to read:

11 Sec. 18.45.100. NUCLEAR FACILITIES PROHIBITED. A person may not  
12 construct a nuclear fuel production facility, a nuclear utilization  
13 facility, a nuclear reprocessing facility, or a nuclear enhancement  
14 facility in the state.

15 \* Sec. 2. AS 18.45 is amended by adding new sections to read:

16 Sec. 18.45.110. HIGH LEVEL RADIOACTIVE WASTE DISPOSAL FACILITY  
17 PERMIT. (a) A person may not construct a high level radioactive waste  
18 disposal facility in the state unless he has first obtained a permit  
19 from the commissioner to construct the facility on land designated by  
20 the legislature under (b) of this section.

21 (b) The legislature shall designate by law the land in the state  
22 on which a high level radioactive waste disposal facility may be  
23 located.

24 (c) A permit may not be issued by the commissioner under this  
25 section unless

26 (1) the governor has approved the permit;

27 (2) local approval has been obtained; local approval is  
28 obtained

29 (A) if the municipality with jurisdiction over the

1 proposed facility site has approved the permit; or

2 (B) if the facility is to be located in the unorganized  
3 borough, a majority of the registered voters who live within 100  
4 miles of the proposed facility votes to approve the issuance of  
5 the permit at a general election of the state or at a special  
6 election of the state called for the purpose; and

7 (3) issuance of the permit is approved by a majority of the  
8 registered voters at a general or special statewide election.

9 (d) The commissioner shall adopt regulations governing the issu-  
10 ance of permits required by this section.

11 Sec. 18.45.120. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR  
12 FACILITY OPERATION. (a) A person may not operate a high level radio-  
13 active waste disposal facility unless he has furnished proof to the  
14 commissioner of financial ability to care for the radioactive material  
15 that will be used in the facility until the material is no longer a  
16 threat to health or safety, as determined by the commissioner by regu-  
17 lation. Financial responsibility may be demonstrated by self-insurance,  
18 insurance, surety, or guarantee, under terms the commissioner may pre-  
19 scribe.

20 (b) Acceptance of proof of financial responsibility under this  
21 section expires

22 (1) one year from its issuance for self-insurance;

23 (2) on the effective date of a change in the surety bond,  
24 guarantee, or insurance agreement; or

25 (3) on the expiration or cancellation of the surety bond,  
26 guarantee, or insurance agreement.

27 (c) The person whose proof of financial responsibility is accepted  
28 by the commissioner under this section shall notify the commissioner at  
29 least 30 days before the effective date of a change, expiration or

1 cancellation in the surety bond, guarantee, or insurance agreement.  
2 Application for renewal of acceptance of proof of financial responsi-  
3 bility under this section must be filed at least 30 days before the  
4 date of expiration.

5 (d) The commissioner, after notice and hearing, may revoke accep-  
6 tance of proof of financial responsibility if he determines that

7 (1) acceptance was procured by fraud or misrepresentation;  
8 or

9 (2) a change of circumstance has occurred, other than a  
10 change specified in (b)(1) - (3) of this section, which would have  
11 warranted denial of the application.

12 \* Sec. 3. AS 18.45.110(a) is amended to read:

13 Sec. 18.45.110. FACILITIES [HIGH LEVEL RADIOACTIVE WASTE DISPOSAL  
14 FACILITY] PERMIT. (a) A person may not construct a nuclear fuel pro-  
15 duction facility, nuclear utilization facility, nuclear reprocessing  
16 facility, nuclear enhancement facility, or high level radioactive waste  
17 disposal facility in the state unless he has first obtained a permit  
18 from the commissioner to construct the facility on land designated by  
19 the legislature under (b) of this section.

20 \* Sec. 4. AS 18.45.110(b) is amended to read:

21 (b) The legislature shall designate by law the land in the state  
22 on which a nuclear fuel production, utilization, reprocessing, enhance-  
23 ment, or high level radioactive waste disposal facility may be located.

24 \* Sec. 5. AS 18.45.120(a) is amended to read:

25 (a) A person may not operate a nuclear fuel production facility,  
26 a nuclear utilization facility, a nuclear reprocessing facility, a  
27 nuclear enhancement facility, or a high level radioactive waste dis-  
28 posal facility unless he has furnished proof to the commissioner of  
29 financial ability to care for the radioactive material which will be

1 used in the facility until the material is no longer a threat to health  
2 or safety, as determined by the commissioner by regulation. Financial  
3 responsibility may be demonstrated by self-insurance, insurance, surety,  
4 or guarantee, under terms the commissioner may prescribe.

5 \* Sec. 6. AS 18.45 is amended by adding new sections to read:

6 Sec. 18.45.130. TRANSPORTATION OF RADIOACTIVE WASTE MATERIAL.

7 (a) The transportation of high level radioactive waste material,  
8 except to a facility approved for operation under this chapter or for  
9 purposes of disposal outside the state, is prohibited.

10 (b) A person may not transport radioactive waste material in the  
11 state unless he has first obtained a permit from the commissioner. The  
12 commissioner shall adopt regulations governing the issuance of permits  
13 required by this subsection, and shall establish and implement a system  
14 to record by manifest the movement of radioactive waste materials which  
15 are transported.

16 (c) This section does not apply to the transportation of radio-  
17 active waste material by the federal government. When an agency of the  
18 federal government proposes to transport radioactive waste material in  
19 the state, the agency shall notify the commissioner and the Department  
20 of Public Safety of its plans. When notice is received from the federal  
21 agency, the commissioner and the commissioner of public safety may take  
22 any action they regard as necessary to protect the health and safety of  
23 persons in the vicinity of the route to be used to transport the radio-  
24 active waste material. The notice provisions of this subsection do not  
25 apply if advance notice would represent a threat to national security.

26 Sec. 18.45.140. PROOF OF RESPONSIBILITY FOR DISPOSAL OF HIGH  
27 LEVEL RADIOACTIVE WASTES REQUIRED. (a) A person may not dispose of  
28 high level radioactive wastes in the state unless he has furnished  
29 proof to the commissioner of financial ability to care for the radio-

1 active waste material. Financial responsibility may be demonstrated by  
2 self-insurance, insurance, surety, or guarantee, under terms the commis-  
3 sioner may prescribe.

4 (b) Acceptance of proof of financial responsibility under this  
5 section expires

6 (1) one year from its issuance for self-insurance;

7 (2) on the effective date of a change in the surety bond,  
8 guarantee, or insurance agreement; or

9 (3) on the expiration or cancellation of the surety bond,  
10 guarantee, or insurance agreement.

11 (c) The person whose proof of financial responsibility is accepted  
12 by the commissioner under this section shall notify the commissioner at  
13 least 30 days before the effective date of a change, expiration or  
14 cancellation in the surety bond, guarantee, or insurance agreement.  
15 Application for renewal of acceptance of proof of financial responsi-  
16 bility under this section must be filed at least 30 days before the  
17 date of expiration.

18 (d) The commissioner, after notice and hearing, may revoke accep-  
19 tance of proof of financial responsibility if he determines that

20 (1) acceptance was procured by fraud or misrepresentation;

21 or

22 (2) a change of circumstance has occurred, other than a  
23 change specified in (b)(1) - (3) of this section, which would have  
24 warranted denial of the application.

25 Sec. 18.45.150. PENALTIES. (a) A person who violates a provision  
26 of AS 18.45.130 is guilty of a class C felony.

27 (b) In addition to the penalty prescribed for a class C felony  
28 under AS 12.55.035(b)(2) and (c), a person who violates a provision of  
29 AS 18.45.130 - 18.45.140 is subject to

1 (1) a penalty of \$50,000 for each offense; each day that the  
2 violation continues constitutes a separate offense;

3 (2) the payment to the state of expenses incurred by the  
4 state in removing, correcting, or abating the adverse effects of the  
5 violation; and

6 (3) actual damages resulting from the violation.

7 Sec. 18.45.160. DEFINITIONS. In AS 18.45.100 - 18.45.160,

8 (1) "commissioner" means the commissioner of environmental  
9 conservation;

10 (2) "high level radioactive waste" means

11 (A) used nuclear reactor fuel;

12 (B) waste produced during the reprocessing of used  
13 nuclear reactor fuel; and

14 (C) elements having an atomic number greater than 92  
15 and containing 10 or more nanocuries per gram;

16 (3) "manifest" means the form used for identifying the  
17 quantity, composition, origin, routing, and destination of radioactive  
18 wastes during transportation;

19 (4) "nuclear fuel production facility" means a facility that  
20 purifies radioactive mineral concentrates and fabricates fissionable  
21 material to be used for producing energy in a nuclear reactor; and

22 (5) "nuclear utilization facility" means an apparatus,  
23 device, or equipment in which nuclear fission is sustained in a self-  
24 supporting and controlled chain reaction; term does not include an  
25 apparatus, device, or equipment used exclusively for educational, medi-  
26 cal, or research purposes.

27 \* Sec. 7. AS 46.03.250 is amended to read:

28 Sec. 46.03.250. AUTHORITY. The department shall adopt regula-  
29 tions

1           (1) establishing standards governing the discharge of low  
2 level radioactive materials [RADIONUCLIDES] to the air, water, land,  
3 and subsurface land of the state;

4           (2) establishing safeguards for radioactive waste materials  
5 that do not constitute a threat to public health or safety and that may  
6 be stored or disposed in the state; and

7           (3) establishing procedures for the storage and disposal of  
8 radioactive materials used in medicine, education, instruments, indus-  
9 trial testing, or scientific research.

10 \* Sec. 8. AS 46.03.260 is amended to read:

11           Sec. 46.03.260. USE OF RADIOACTIVE MATERIALS [ATOMIC RADIATION].

12           A person who conducts an operation which results in the discharge of  
13 low level radioactive materials [RADIONUCLIDES] to the air, water, land  
14 or subsurface land of the state must obtain a permit from the depart-  
15 ment before commencing the discharge.

16 \* Sec. 9. AS 46.03.900 is amended by adding a new paragraph to read:

17           (30) "low level radioactive materials" means a radioactive  
18 waste other than

19                   (A) used nuclear reactor fuel;

20                   (B) waste produced during the reprocessing of used  
21 nuclear reactor fuel; and

22                   (C) elements having an atomic number greater than 92  
23 and containing 10 or more nanocuries per gram.

24 \* Sec. 10. AS 46.03.020(10) is amended by adding a new subparagraph to  
25 read:

26                   (I) handling, transportation, treatment, storage, and  
27 disposal of hazardous wastes;

28 \* Sec. 11. AS 46.03.100 is amended by adding a new subsection to read:

29           (c) A permit for disposal of a hazardous waste may not be issued

1 under this section unless the applicant for the permit has furnished  
2 proof to the commissioner of financial ability to control the hazardous  
3 waste. Proof of financial responsibility may be demonstrated by self-  
4 insurance, insurance, surety, or guarantee, under regulations issued by  
5 the department. Acceptance of proof of financial responsibility under  
6 this subsection expires

7 (1) one year from its issuance for self-insurance;

8 (2) on the effective date of a change in the surety bond,  
9 guarantee, or insurance agreement; or

10 (3) on the expiration or cancellation of the surety bond,  
11 guarantee, or insurance agreement.

12 \* Sec. 12. AS 46.03 is amended by adding new sections to read:

13 ARTICLE 5. RADIATION AND HAZARDOUS WASTE PROTECTION.

14 Sec. 46.03.296. DISPOSAL OF HAZARDOUS WASTES. (a) It is unlawful  
15 to dispose of hazardous wastes in the state unless

16 (1) the waste has been treated and disposed of in a manner  
17 that uses the maximum degree of reduction of the harmful qualities of a  
18 hazardous waste which is subject to this chapter and which the depart-  
19 ment, on a case-by-case basis, determines is achievable for the hazar-  
20 dous waste by application of production processes and available methods,  
21 systems and techniques, taking into account energy, environmental, and  
22 economic impacts and other costs; and

23 (2) the waste is disposed of in a manner that will ensure  
24 the protection of human health, livestock, wildlife, property, and the  
25 environment.

26 (b) The department shall adopt regulations in accordance with the  
27 Administrative Procedure Act (AS 44.62) for the treatment, storage, and  
28 disposal of hazardous wastes to ensure the protection of human health,  
29 livestock, wildlife, property, and the environment.

1           Sec. 46.03.299. CONTROL OF HAZARDOUS WASTES. The department  
2 shall, by regulations adopted under the Administrative Procedure Act  
3 (AS 44.62), establish a state hazardous waste program; the state hazar-  
4 dous waste program shall

5           (1) consistent with the Federal Resource Conservation and  
6 Recovery Act of 1976 (P.L. 94-580, 42 U.S.C. 6901-6987),

7           (A) establish criteria to identify the characteristics  
8 of hazardous wastes;

9           (B) enumerate specific hazardous wastes subject to the  
10 provisions of AS 46.03.302 and 46.03.305; and

11           (C) identify the sources of hazardous wastes enumerated  
12 under (B) of this paragraph;

13           (2) qualify the department to receive authorization from the  
14 administrator of the Environmental Protection Agency to administer and  
15 enforce a hazardous waste program in accordance with the Federal  
16 Resource Conservation and Recovery Act;

17           (3) determine the amount of a hazardous waste that is so  
18 small as to not present a hazard to public health, livestock, fish,  
19 wildlife, and the environment of the state when disposed of;

20           (4) exempt a person who generates, treats, transports,  
21 stores, or disposes of a hazardous waste from the provisions of this  
22 chapter if the quantity of the hazardous waste is less than the amount  
23 identified in (3) of this section;

24           (5) establish

25           (A) criteria for identifying appropriate hazardous  
26 waste disposal site locations;

27           (B) procedures by which the public shall have opportu-  
28 nity to

29           (1) participate in hazardous waste disposal site

1 locations;

2 (ii) review and comment on issuance of hazardous  
3 waste disposal permits by the department; and

4 (6) avoid duplication of federal laws and regulations relat-  
5 ing to the control of hazardous wastes.

6 Sec. 46.03.302. HAZARDOUS WASTE PERMIT. (a) A person may not  
7 process, transport, store, or dispose of a hazardous waste as defined  
8 by the department by regulation unless that person first secures a  
9 permit from the department and submits to the department any reports or  
10 manifests that the department may require for handling the hazardous  
11 wastes.

12 (b) A person who generates hazardous waste is not required to  
13 obtain a permit under (a) of this section unless the person also pro-  
14 cesses, transports, stores, or disposes of the hazardous waste.

15 Sec. 46.03.305. HAZARDOUS WASTE REPORTS AND MANIFESTS. A person  
16 who generates hazardous wastes shall submit to the department reports  
17 or manifests that the department may require for handling the hazardous  
18 wastes.

19 Sec. 46.03.308. TRANSPORTATION OF HAZARDOUS WASTES. Hazardous  
20 wastes may not be transported to a hazardous waste disposal site unless  
21 the wastes are accompanied by a report or manifest which the department  
22 may require for handling hazardous wastes.

23 Sec. 46.03.311. PUBLIC RECORDS. (a) Permits, permit applica-  
24 tions, records, reports, and information and documentation obtained  
25 under AS 46.03.302 or 46.03.305 are available to the public for in-  
26 spection and copying. However, upon a showing satisfactory to the  
27 commissioner that a record, report, permit, application, or information  
28 would, if made public, divulge methods or processes entitled to protec-  
29 tion as trade secrets, the commissioner shall treat the record, report,

1 permit, application, or information as confidential.

2 (b) Information that is confidential may be transmitted under a  
3 continuing restriction of confidentiality to other officers, employees,  
4 or authorized representatives of the state or of the United States if

5 (1) the person responsible for furnishing the record,  
6 report, permit, application, or information to which such information  
7 pertains is informed at least two weeks before the transmittal; and

8 (2) the information has been acquired by the department  
9 under the provisions of AS 46.03.296 - 46.03.311.

10 (c) The provisions of this section do not limit the department's  
11 authority to release confidential information during emergency situa-  
12 tions.

13 \* Sec. 13. AS 46.03.790(a) is amended to read:

14 (a) A person who violates or who causes or permits a violation of  
15 a provision of this chapter or AS 46.04, or of a regulation, lawful  
16 order of the department, or permit, approval, or acceptance, or term or  
17 condition of a permit, approval, or acceptance issued under this  
18 chapter or AS 46.04 is guilty of a class B misdemeanor [VIOLATION].

19 \* Sec. 14. AS 46.03.790(b) is amended to read:

20 (b) A person who wilfully violates a provision of this chapter,  
21 or of a regulation, lawful order of the department, or permit, approval,  
22 or acceptance, or term or condition of a permit, approval, or accep-  
23 tance issued under this chapter or AS 46.04 is guilty of a class A  
24 misdemeanor.

25 \* Sec. 15. AS 46.03 is amended by adding new sections to read:

26 Sec. 46.03.830. PROOF OF FINANCIAL RESPONSIBILITY REQUIRED FOR  
27 PETROCHEMICAL FACILITY OR HAZARDOUS WASTE DISPOSAL SITE OPERATION. (a)  
28 A person may not operate a petrochemical facility or a hazardous waste  
29 disposal site unless the person has furnished proof to the commissioner

1 of financial ability to control a hazardous waste that will be used in,  
2 produced by, or disposed of at the facility or the site. Proof of  
3 financial responsibility shall include responsibility for the hazardous  
4 waste after the facility or site is closed, and may be demonstrated by  
5 self-insurance, insurance, surety, or guarantee, under regulations  
6 issued by the department.

7 (b) Acceptance of proof of financial responsibility under this  
8 section expires

9 (1) one year from its issuance for self-insurance;

10 (2) on the effective date of a change in the surety bond,  
11 guarantee, or insurance agreement; or

12 (3) on the expiration or cancellation of the surety bond,  
13 guarantee, or insurance agreement.

14 Sec. 46.03.833. COMPLIANCE WITH FINANCIAL RESPONSIBILITY REQUIRE-  
15 MENTS. (a) A person whose proof of financial responsibility is  
16 accepted by the department under AS 46.03.830 or under 46.03.100(c)  
17 shall notify the department at least 30 days before the effective date  
18 of a change, expiration, or cancellation in the surety bond, guarantee,  
19 or insurance agreement. Application for renewal of acceptance of proof  
20 of financial responsibility under AS 46.03.830 or 46.03.100(c) must be  
21 filed at least 30 days before the date of expiration.

22 (b) The department, after notice and hearing, may revoke accept-  
23 ance of proof of financial responsibility if it determines that

24 (1) acceptance was procured by fraud or misrepresentation;

25 or

26 (2) a change of circumstance has occurred that warrants  
27 revocation under regulations issued by the department.

28 \* Sec. 16. AS 46.03.900 is amended by adding new paragraphs to read:

29 (30) "dispose" has the same meaning as the term "disposal" is

1 defined in 42 U.S.C. 6903(3);

2 (31) "hazardous waste" means a waste or combination of wastes  
3 which because of quantity, concentration, or physical, chemical, or  
4 infectious characteristics may

5 (A) cause, or significantly contribute to, an increase  
6 in mortality or an increase in serious irreversible or incapacitating  
7 reversible illness; or

8 (B) pose a substantial present or potential hazard to  
9 human health or the environment when improperly managed, treated,  
10 stored, transported, or disposed of;

11 (32) "manifest" means the form used for identifying the  
12 quantity, composition, origin, routing, and destination of a hazardous  
13 waste when the hazardous waste is transported;

14 (33) "storage" means the containment of hazardous waste,  
15 either on a temporary basis or for a period of years, in a manner that  
16 does not constitute disposal of the hazardous waste;

17 (34) "treatment" has the same meaning as the term is defined  
18 in 42 U.S.C. 6903(27).

19 \* Sec. 17. AS 18.45.010 - 18.45.080 are repealed.

20 \* Sec. 18. Sections 1, 2, 6 - 9, and 17 of this Act take effect immedi-  
21 ately in accordance with AS 01.10.070(c).

22 \* Sec. 19. Sections 3 - 5 of this Act take effect on the date of a final  
23 court order ruling AS 18.45.100 as enacted by sec. 1 of this Act invalid or  
24 unconstitutional.

25 \* Sec. 20. Sections 10 - 16 of this Act take effect July 1, 1981.  
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