

Offered: 4/24/84
Referred: Judiciary

Original sponsor: Resources Committee

1 IN THE SENATE

BY THE RESOURCES COMMITTEE

2

CS FOR SENATE BILL NO. 503 (Resources)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to hazardous waste; changing pen-
7 alties for environmental pollution violations; and
8 providing for an effective date."

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

10 * Section 1. AS 46.03.299 is repealed and reenacted to read:

11 Sec. 46.03.299. REGULATION OF HAZARDOUS WASTE. (a) The depart-
12 ment shall, in accordance with the Administrative Procedure Act
13 (AS 44.62),

14 (1) adopt by reference and enforce regulations relating to
15 hazardous waste management adopted by the federal government under
16 42 U.S.C. 6921 - 6934, as amended; and

17 (2) not later than July 1, 1986, adopt other regulations
18 that take effect July 1, 1987, for the management of hazardous waste,
19 including waste that exhibits the characteristic of toxicity, persis-
20 tence, or carcinogenicity, or other characteristics identified as
21 hazardous by the Environmental Protection Agency.

22 (b) Regulations adopted under (a) of this section shall exempt
23 from their coverage mining waste and waste associated with the explo-
24 ration, development, or production of crude oil, natural gas, or
25 geothermal energy until studies required under 42 U.S.C. 6982(f) and
26 (m) are completed. The department, after considering the findings in
27 the reports of these studies, may terminate or amend the exemptions.

28 (c) The department shall take all actions necessary to receive
29 authorization from the administrator of the Environmental Protection

1 Agency to administer and enforce a hazardous waste program in accor-
2 dance with 42 U.S.C. 6901 - 6987 (Resource Conservation and Recovery
3 Act of 1976).

4 (d) Regulations adopted under (a) of this section shall cover
5 (1) hazardous waste, not otherwise exempted by law, that is generated
6 in any month by a single generator in an amount of 220 pounds or more,
7 and (2) acute hazardous wastes identified in 40 C.F.R. 261.33(e), not
8 otherwise exempted by law, that are generated in any month by a single
9 generator in an amount of 2.2 pounds or more. The department shall
10 extend the regulations to manage smaller quantities of hazardous waste
11 if the quantities specified in this subsection exceed the quantities
12 regulated under the authority of 42 U.S.C. 6921 - 6934, as amended.
13 The department may at any time extend coverage of regulations adopted
14 under (a)(2) of this section to small quantities of hazardous waste
15 and acute hazardous waste.

16 (e) During the period July 1, 1986 through June 30, 1987 the
17 department shall conduct a program to inform persons of their re-
18 sponsibilities under regulations adopted under (a)(2) of this section.

19 * Sec. 2. AS 46.03.308 is repealed and reenacted to read:

20 Sec. 46.03.308. TRANSPORTATION OF HAZARDOUS WASTE. (a) Hazard-
21 ous waste may not be transported in the state unless the waste is
22 accompanied by a manifest and the generator or transporter has de-
23 livered a copy of the manifest to the department before the transpor-
24 tation begins.

25 (b) The department shall send a copy of each manifest received
26 under (a) of this section to the state and local public safety agen-
27 cies with jurisdiction over areas covered by a hazardous waste trans-
28 portation route.

29 * Sec. 3. AS 46.03 is amended by adding a new section to read:

1 Sec. 46.03.309. TEMPORARY COLLECTION OF HAZARDOUS WASTE. The
2 department shall provide for the temporary collection of hazardous
3 waste to be prepared for shipment to a federally approved hazardous
4 waste disposal site. The department shall establish four periods in
5 each calendar year during which it shall collect hazardous waste. A
6 collection point may accept hazardous waste only from small quantity
7 generators and household generators as defined by the Environmental
8 Protection Agency.

9 * Sec. 4. AS 46.03 is amended by adding new sections to read:

10 Sec. 46.03.313. HAZARDOUS WASTE MANAGEMENT FACILITIES AND SITES.

11 (a) The department shall evaluate and select potential sites for
12 hazardous waste management facilities in the state. In evaluating and
13 selecting sites for management facilities, the department shall con-
14 sider at least the following factors:

15 (1) economic feasibility, including proximity to concen-
16 trations of generators of the types of hazardous waste likely to be
17 proposed and permitted for management;

18 (2) intrinsic suitability of the sites;

19 (3) federal and state pollution control and environmental
20 protection regulations;

21 (4) the risk and effect for local residents, units of
22 government, and the local public health, safety, and welfare, includ-
23 ing such dangers as an accidental release of waste during transporta-
24 tion to a facility or at a facility, water, air, and land pollution,
25 and fire or explosion;

26 (5) the consistency of a facility with, and its effect on,
27 existing and planned local land use and development; local laws,
28 ordinances, and permits; and local public facilities and services; and

29 (6) the adverse effects of a facility at the site on

1 agriculture and natural resources and opportunities to mitigate or
2 eliminate the adverse effects by stipulations, conditions, and re-
3 quirements relating to the design and operation of a management facil-
4 ity at the proposed site.

5 (b) By July 1, 1986, the department shall adopt regulations that

6 (1) interpret and clarify the factors listed in (a) of this
7 section; and

8 (2) establish procedures for processing, reviewing, and
9 approving or disapproving applications for the siting and operation of
10 privately owned hazardous waste management facilities.

11 (c) The department may authorize the siting and operation of
12 privately owned hazardous waste management facilities in accordance
13 with factors and requirements established under this section.

14 (d) The department shall hold public hearings in each election
15 district in which a hazardous waste management facility site is pro-
16 posed to be located. The department shall give reasonable public
17 notice of the time, date, and place of each public hearing at least 30
18 days before the hearing. The public shall be afforded an opportunity
19 at each hearing to submit written and oral testimony concerning a
20 potential site. The department shall consider the testimony submitted
21 at public hearings when it prepares reports under AS 46.03.314.

22 (e) For purposes of this section, "intrinsic suitability" of a
23 site means that, based on existing data on the inherent and natural
24 attributes, physical features, and location of the site, there is no
25 known reason why a waste management facility that may be located in
26 the site could not reasonably be expected to qualify for a permit
27 under AS 46.03.302.

28 Sec. 46.03.314. REPORTS ON MANAGEMENT SITES AND FACILITIES. (a)
29 Not later than July 1, 1987, the department shall submit to the

1 governor and the legislature a preliminary report that includes

2 (1) proposals for the siting of hazardous waste management
3 facilities in the state;

4 (2) proposals for the methods of financing and operating
5 the facilities;

6 (3) proposals for the types of facilities that should be
7 constructed, such as chemical processing facilities, incineration
8 facilities, and transfer and storage facilities; and

9 (4) information about private hazardous waste management
10 sites and facilities approved by the department.

11 (b) Not later than July 1, 1989, the department shall submit to
12 the governor and the legislature a final report that includes

13 (1) identification of sites selected by the department for
14 hazardous waste management facilities;

15 (2) recommendations for the methods of financing and oper-
16 ating facilities at the sites listed in (1) of this subsection;

17 (3) recommendations for the types of facilities that should
18 be constructed at sites listed in (1) of this subsection; and

19 (4) information about private hazardous waste management
20 sites and facilities approved by the department.

21 * Sec. 5. AS 46.03.760(a) is amended to read:

22 (a) A person who violates or causes or permits to be violated a
23 provision of this chapter other than AS 46.03.250 - 46.03.314, or a
24 provision of [OR] AS 46.04, or a regulation, a lawful order of the
25 department, or a permit, approval, or acceptance, or term or condition
26 of a permit, approval, or acceptance issued under this chapter or
27 AS 46.04 is liable, in a civil action, to the state for a sum to be
28 assessed by the court of not less than \$500 nor more than \$100,000 for
29 the initial violation, nor more than \$5,000 for each day after that

1 [THEREAFTER] on which the violation continues, and that [WHICH] shall
2 reflect, when applicable,

3 (1) reasonable compensation in the nature of liquidated
4 damages for any adverse environmental effects caused by the violation,
5 that [WHICH] shall be determined by the court according to the toxi-
6 city, degradability and dispersal characteristics of the substance
7 discharged, the sensitivity of the receiving environment, and the
8 degree to which the discharge degrades existing environmental quality;

9 (2) reasonable costs incurred by the state in detection,
10 investigation, and attempted correction of the violation; [AND]

11 (3) the economic savings realized by the person in not
12 complying with the requirement for which a violation is charged.

13 * Sec. 6. AS 46.03.760(b) is amended to read:

14 (b) Except as determined by the court under (f)(4) of this
15 section, actions [ACTIONS] under this section may not be used for
16 punitive purposes, and sums assessed by the court must be compensatory
17 and remedial in nature.

18 * Sec. 7. AS 46.03.760 is amended by adding a new subsection to read:

19 (f) A person who violates or causes or permits to be violated a
20 provision of AS 46.03.250 - 46.03.314, or a regulation, a lawful order
21 of the department, or a permit, approval, or acceptance, or term or
22 condition of a permit, approval, or acceptance issued under AS 46.-
23 03.250 - 46.03.314 is liable, in a civil action, to the state for a
24 sum to be assessed by the court of not less than \$500 nor more than
25 \$100,000 for the initial violation, nor more than \$10,000 for each day
26 after that on which the violation continues, and that shall reflect,
27 when applicable,

28 (1) reasonable compensation in the nature of liquidated
29 damages for any adverse environmental effects caused by the violation,

1 that shall be determined by the court according to the toxicity,
2 degradability and dispersal characteristics of the substance dis-
3 charged, the sensitivity of the receiving environment, and the degree
4 to which the discharge degrades existing environmental quality;

5 (2) reasonable costs incurred by the state in detection,
6 investigation, and attempted correction of the violation;

7 (3) the economic savings realized by the person in not
8 complying with the requirement for which a violation is charged; and

9 (4) the need for an enhanced civil penalty to deter future
10 noncompliance.

11 * Sec. 8. AS 46.03.790 is amended to read:

12 Sec. 46.03.790. CRIMINAL PENALTIES. (a) Except as provided in
13 (d) - (f) of this section, a [A] person who negligently violates [OR
14 WHO CAUSES OR PERMITS A VIOLATION OF] a provision of this chapter or
15 AS 46.04, or of a regulation, lawful order of the department, or
16 permit, approval, or acceptance, or term or condition of a permit,
17 approval, or acceptance issued under this chapter or AS 46.04 is
18 guilty of a class B misdemeanor.

19 (b) Except as provided in (d) - (f) of this section, a [A]
20 person who knowingly [WILFULLY] violates a provision of this chapter
21 or AS 46.04, or of a regulation, lawful order of the department, or
22 permit, approval, or acceptance, or term or condition of a permit,
23 approval, or acceptance issued under this chapter or AS 46.04 is
24 guilty of a class A misdemeanor.

25 (c) Each day on which a violation described in [(a) OR (b) OF]
26 this section occurs is considered a separate violation.

27 (d) Notwithstanding (a) and (b) of this section, a [A] person
28 who fails to provide or falsely states information required under
29 AS 46.03.755 or AS 46.04 is guilty of a misdemeanor and, upon convic-

1 tion, is punishable by a fine of not more than \$25,000, or by impri-
2 sonment for not more than one year, or by both. Each unlawful act
3 constitutes a separate offense.

4 (e) Notwithstanding (a) and (b) of this section, a person who
5 knowingly (1) transports any hazardous waste to a facility without a
6 permit required under AS 46.03.250 - 46.03.314; (2) treats, stores, or
7 disposes of hazardous waste without a permit required under AS 46.-
8 03.250 - 46.03.314; or (3) makes a false statement or representation
9 in an application, label, manifest, record, report, permit, or other
10 document filed, maintained, or used for purposes of compliance with
11 the hazardous waste provisions of AS 46.03.250 - 46.03.314 or regu-
12 lations adopted under those provisions, is punishable by a fine of not
13 more than \$10,000 per day or by imprisonment for not more than one
14 year, or both.

15 (f) Notwithstanding the penalty provisions of (a) - (e) of this
16 section, a defendant that is an organization is, upon conviction of a
17 violation of any of the provisions listed in this section, subject to
18 the penalties set out in AS 12.55.035(c).

19 * Sec. 9. AS 46.03.900 is amended by adding new paragraphs to read:

20 (36) "mining waste" means solid waste from the extraction,
21 beneficiation and processing of ores and minerals, including coal, and
22 including phosphate rock and overburden from the mining of uranium
23 ore;

24 (37) "waste associated with the exploration, development, or
25 production of crude oil, natural gas, or geothermal energy" means

26 (A) waste, including drilling mud, cuttings, hydro-
27 carbons, brine, acid, sand, and emulsions or mixtures of fluids
28 produced from and unique to the operation or maintenance of a
29 well, whether naturally occurring or added for the operation or

1 productivity of the well; and

2 (B) waste that is derived intrinsically from primary
3 field operations;

4 (38) "waste derived intrinsically from primary field op-
5 erations" means waste produced from a well, and removed (A) at the
6 drill site by crude oil and wastewater treatment process; or (B) at
7 crude oil production facilities before custody transfer; "waste de-
8 rived intrinsically from primary field operations" does not include
9 spent solvent from equipment maintenance activities, discarded chemi-
10 cal products, or fuel.

11 * Sec. 10. This Act takes effect immediately in accordance with AS 01.-
12 10.070(c).