

HOUSE BILL NO. 34

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOPONEN

Introduced: 1/21/91

Referred: Labor and Commerce, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the duties of the owners and operators of hazardous substance
2 industrial establishments who plan to close or transfer operations."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1. LEGISLATIVE FINDINGS.** The legislature finds that

5 (1) the generation, handling, storage, and disposal of hazardous substances pose an
6 inherent danger of exposing the citizens, property, and natural resources of the state to substantial risk
7 of harm or degradation;

8 (2) the closing of operations and the transfer of real property utilized for the generation,
9 handling, storage, and disposal of hazardous substances should be conducted in a rational and orderly
10 way so as to mitigate potential risks; and

11 (3) it is necessary to impose a precondition on a closure or transfer of these operations
12 by requiring the adequate preparation and implementation of acceptable cleanup procedures for the
13 closure or transfer.

14 * **Sec. 2.** AS 46 is amended by adding a new chapter to read:

1 adopt regulations establishing

2 (1) minimum standards for soil, groundwater, and surface water quality necessary
3 for the detoxification of the site of an industrial establishment, including buildings and
4 equipment, to ensure that the potential for harm to public health and safety is minimized to the
5 maximum extent practicable, taking into consideration the location of the site and surrounding
6 ambient conditions;

7 (2) criteria necessary for the evaluation and approval of cleanup plans;

8 (3) a fee schedule, as necessary, reflecting the actual costs associated with the
9 review of negative declarations and cleanup plans and other provisions or procedures necessary
10 to implement this chapter.

11 Sec. 46.10.030. APPROVAL OF NEGATIVE DECLARATION OR REQUEST FOR
12 CLEANUP PLAN. The department shall, within 45 days after its submission, approve the
13 negative declaration or inform the industrial establishment that the establishment is required to
14 submit a cleanup plan.

15 Sec. 46.10.040. INSPECTIONS. The department shall, under the schedule contained in
16 an approved cleanup plan, inspect the premises to determine conformance with the minimum
17 standards for soil, groundwater, and surface water quality and shall certify that the cleanup plan
18 has been executed and that the site has been detoxified.

19 Sec. 46.10.050. TRANSFER OF INDUSTRIAL ESTABLISHMENT CONTINGENT ON
20 COMPLIANCE. Notwithstanding the provisions of a law or regulation to the contrary, the
21 transfer of an industrial establishment is contingent on compliance with this chapter.

22 Sec. 46.10.060. CONDITIONS FOR DEFERRAL. (a) If the premises of the industrial
23 establishment would be subject to substantially the same use by the purchaser, transferee,
24 mortgagee, or other party to the transfer, the implementation of a cleanup plan and the
25 detoxification of the site may be deferred until the use changes or until the purchaser, transferee,
26 mortgagee, or other party to the transfer closes, terminates, or transfers operations if the
27 department approves the deferral.

28 (b) Within 60 days after receiving notice of the sale or realty transfer and the certification
29 that the industrial establishment would be subject to substantially the same use, the department
30 may approve, conditionally approve, or deny the request for a deferral under (a) of this section.

31 (c) On approval of the request for the deferral, the implementation of a cleanup plan and

1 detoxification of the site is deferred.

2 (d) On denial of the request for the deferral, the industrial establishment shall implement
3 the cleanup plan and detoxify the site as required under this chapter.

4 (e) The authority to defer implementation of the cleanup plan under (a) of this section
5 may not be construed to limit, restrict, or prohibit the department from directing site cleanup
6 under another law or regulation, but is solely applicable to the obligations of the owner or
7 operator of an industrial establishment under this chapter.

8 Sec. 46.10.070. BANKRUPTCY PROCEEDINGS. An obligation imposed by this
9 chapter constitutes a lien or claim that may not be limited or discharged in a bankruptcy
10 proceeding. Each obligation imposed by this chapter constitutes continuing regulatory obligations
11 imposed by the state.

12 Sec. 46.10.080. FAILURE TO COMPLY WITH CHAPTER. (a) The failure of the
13 transferor to comply with this chapter

14 (1) is grounds for voiding the sale or transfer of an industrial establishment or real
15 property used in connection with an industrial establishment by the transferee;

16 (2) entitles the transferee to recover damages from the transferor; and

17 (3) renders the owner or operator of the industrial establishment strictly liable,
18 without regard to fault, for cleanup and removal costs and for direct and indirect damages
19 resulting from the failure to implement the cleanup plan.

20 (b) The failure to submit a negative declaration or cleanup plan under AS 46.10.011 is
21 grounds for the department, after notice and hearing, to void the sale. A person aggrieved by an
22 order of the department under this subsection may appeal the order to the superior court.

23 (c) A person who knowingly gives or causes to be given false information under this
24 chapter or who fails to comply with this chapter is liable for a penalty of not more than \$25,000
25 for each offense. If the violation is of a continuing nature, each day during which it continues
26 constitutes an additional and separate offense. An officer or management official of an industrial
27 establishment who knowingly directs or authorizes the violation of a provision of this chapter is
28 personally liable for the penalties established in this subsection.

29 Sec. 46.10.090. RELATION TO OTHER LAWS. This chapter may not be construed to
30 limit, restrict, or prohibit the department from directing site cleanup under another law or
31 regulation.

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Sec. 46.10.100. DEFINITIONS. In this chapter

(1) "cleanup plan" means a plan for the cleanup of industrial establishments, approved by the department, which may include

(A) a description of the locations, types, and quantities of hazardous substances that will remain on the premises;

(B) a description of the types and locations of storage vessels, surface impoundments, or secured landfills containing hazardous substances;

(C) recommendations regarding the most practicable method of cleanup;

(D) a cost estimate of the cleanup plan;

(E) graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment; and

(F) evaluation of all residual soil, groundwater, and surface water contamination;

(2) "close" or "closing" means

(A) to cease all operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances;

(B) to temporarily cease operations for a period of at least two years;

(C) to be a party to or subject to a transaction or proceeding through which an industrial establishment becomes nonoperational for health or safety reasons;

(3) "department" means the Department of Environmental Conservation;

(4) "hazardous substances"

(A) means the elements and compounds, including petroleum products, that are defined as hazardous by the department, after public hearing, and that are consistent to the maximum extent possible with the list of

(i) hazardous substances adopted by the Environmental Protection Agency under 33 U.S.C. 1321 (Section 311 of the Federal Water Pollution Control Act Amendments of 1972); and

(ii) toxic pollutants designated by Congress or the Environmental Protection Agency under 33 U.S.C. 1317 (Section 307 of the Federal Water Pollution Control Act Amendments of 1972); and

(B) excludes sewage and sewage sludge;

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(5) "industrial establishment"

(A) means any place of business engaged in operations that involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances on-site, above or below ground, having a Standard Industrial Classification number of 22-39 inclusive, 46-49 inclusive, 51, or 76, as designated in the Standard Industrial Classifications Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States;

(B) does not include facilities or parts of facilities subject to operational closure and post-closure maintenance requirements under 42 U.S.C. 6901 et seq. (Solid Waste Disposal Act) or an establishment engaged in the production or distribution of agricultural commodities;

(6) "negative declaration" means a written declaration submitted by an industrial establishment and approved by the department that

(A) there has been no discharge of hazardous substances on the site or any discharge has been cleaned up under procedures approved by the department; and

(B) there remain no hazardous substances or wastes at the site of the industrial establishment;

(7) "transfer" means to be a party to or subject to a transaction, proceeding, or agreement under which an industrial establishment undergoes change in ownership, except for corporate reorganization not substantially affecting the ownership of the industrial establishment, and includes sale of stock in the form of a statutory merger or consolidation, sale of the controlling share of the assets, the conveyance of the real property, dissolution of corporate identity, financial reorganization, and initiation of bankruptcy proceedings.