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Chapter No.

71

AN ACT

Relating to hazardous chemicals, hazardous materials, and hazardous waste.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 11, 1997

Actual Effective Date: September 9, 1997

AN ACT

1 Relating to hazardous chemicals, hazardous materials, and hazardous waste.

2

3 * Section 1. AS 09.65 is amended by adding a new section to read:

4 **Sec. 09.65.240. Liability of the state and regional educational attendance**
5 **areas for release of hazardous substances.** (a) Notwithstanding AS 46.03.822(a),
6 neither the state nor a regional educational attendance area established under AS 14.08,
7 nor an agent or employee of the state or a regional educational attendance area acting
8 within the scope of that agency or employment, is subject to liability under
9 AS 46.03.822 for damages, as defined in AS 46.03.822(k) and 46.03.824, for the
10 release of a hazardous substance at or from any facility used in relation to a regional
11 educational attendance area school as described in AS 14.08.151 or at or from any
12 facility used in relation to a school operated by the state under AS 14.16.

13 (b) In this section,

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1 (1) "facility" has the meaning given in AS 46.03.826;

2 (2) "hazardous substance" has the meaning given in AS 46.03.826.

3 * **Sec. 2.** AS 18.70.090 is amended to read:

4 **Sec. 18.70.090. Enforcement authority.** The Department of Public Safety and
5 the chief of each fire department recognized under regulations adopted by the
6 Department of Public Safety, and their authorized representatives in their respective
7 areas, may enforce the regulations adopted by the Department of Public Safety for the
8 prevention of fire or for the protection of life and property against fire or panic. All
9 state peace officers may assist the Department of Public Safety in the enforcement of
10 AS 18.70.010 - 18.70.100 [, 18.70.310,] and the regulations adopted under those
11 sections. The authority conferred in AS 18.70.010 - 18.70.100 [AND 18.70.310]
12 extends to the enforcement of the provisions of AS 11.46.400 - 11.46.430.

13 * **Sec. 3.** AS 18.70.100(a) is amended to read:

14 (a) A person who violates a provision of AS 18.70.010 - 18.70.100
15 [, 18.70.310,] or a regulation adopted under those sections, or who fails to comply with
16 an order issued under AS 18.70.010 - 18.70.100, [OR 18.70.310] is guilty of a class
17 B misdemeanor. When not otherwise specified, each 10 days that the violation or
18 noncompliance continues is a separate offense.

19 * **Sec. 4.** AS 26.23.071(e) is amended to read:

20 (e) The commission shall

21 (1) serve as the state emergency response commission required under
22 42 U.S.C. 11001 - 11005;

23 (2) facilitate the preparation and implementation of all emergency plans
24 prepared by state agencies under other authorities; the statewide, interjurisdictional, and
25 local plans prepared under this chapter; and the state and regional plans prepared under
26 AS 46.04.200 - 46.04.210;

27 (3) review the plans described in (2) of this subsection according to the
28 criteria established in AS 26.23.077;

29 (4) designate, and revise as necessary, the boundaries of emergency
30 planning districts under AS 26.23.073;

31 (5) establish a local emergency planning committee under

1 AS 26.23.073(d) for each emergency planning district;

2 (6) supervise and coordinate the activities of local emergency planning
3 committees;

4 (7) establish procedures for receiving and processing requests from the
5 public for information under 42 U.S.C. 11044, including tier II information under
6 42 U.S.C. 11022; **procedures established under this paragraph shall designate the**
7 **Department of Environmental Conservation as the state agency to receive and**
8 **process these requests on behalf of the commission;**

9 (8) review reports about responses to disaster emergencies and make
10 recommendations to the appropriate parties involved in the response concerning
11 improved prevention and preparedness;

12 (9) perform other coordinating, advisory, or planning tasks related to
13 emergency planning and preparedness for all types of hazards, community right-to-
14 know reporting, toxic chemical release reporting, or management of hazardous
15 substances;

16 (10) recommend procedures to integrate, as appropriate, hazardous
17 substance response planning under 42 U.S.C. 11001 - 11005, federal contingency
18 planning under 33 U.S.C. 1321 and other federal laws applicable to hazardous
19 substance discharges, and state, regional, and local planning under this chapter and
20 AS 46.04.200 - 46.04.210;

21 (11) to the extent consistent with the constitution and law of the state,
22 perform all other functions prescribed for state emergency response commissions under
23 42 U.S.C. 11001 - 11005; and

24 (12) adopt regulations necessary to carry out the purposes of
25 AS 26.23.071 - 26.23.077 and 42 U.S.C. 11001 - 11005.

26 * Sec. 5. AS 29.35.500(a) is amended to read:

27 (a) If a municipality establishes a program for the reporting of hazardous
28 chemicals, hazardous materials, and hazardous wastes, then the municipality shall
29 require a business or a government agency that handles hazardous chemicals,
30 hazardous materials, or hazardous wastes to submit to a designated person or office of
31 the municipality, on a form approved by the **Alaska State Emergency Response**

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1 Commission [DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE
2 PREVENTION], an inventory of the hazardous chemicals, hazardous materials, and
3 hazardous wastes the business or government agency handles. Notwithstanding other
4 provisions of this title, a municipality that establishes a program for the reporting
5 of hazardous chemicals, hazardous materials, and hazardous wastes may not

6 (1) use a form other than the one required under this section or use
7 a form in addition to the one required under this section;

8 (2) require a business or government agency to submit an inventory
9 of hazardous chemicals, hazardous materials, and hazardous wastes unless the
10 business or government agency is required to do so by the Alaska State
11 Emergency Response Commission;

12 (3) require reporting under this section of a substance not listed in
13 (c) of this section unless it is added by the commission under (c) of this section;

14 (4) require reporting under this section of a substance that is in
15 smaller quantities than provided under (c) of this section unless the reporting of
16 smaller quantities is approved by the commission under (c) of this section.

17 * Sec. 6. AS 29.35.500(c) is amended to read:

18 (c) Unless the Alaska State Emergency Response Commission or a
19 municipality, after public hearing, removes a substance listed in this subsection
20 from the reporting requirements within its jurisdiction, or unless the commission,
21 after public hearing, adds a substance to the reporting requirements of this
22 subsection or requires the reporting of smaller quantities of the substances listed
23 in this subsection, either on a statewide basis or for reporting within particular
24 municipalities, the [THE] following quantities of hazardous chemicals, hazardous
25 materials, and hazardous wastes shall be reported in an inventory required under this
26 section [, AND THE DIVISION OF FIRE PREVENTION OR A MUNICIPALITY
27 MAY REQUIRE THE REPORTING OF SMALLER QUANTITIES]:

28 (1) any quantity of a hazardous material of the hazard class identified
29 in federal placarding regulations as [OF]

30 (A) [POISON A;

31 (B)] Poison Gas Hazard Division No. 2.3 and Poisons 6.1 [B];

1 (B) Explosives 1.1 [(C) CLASS A EXPLOSIVE];

2 (C) Explosives 1.2 and 1.3, excluding smokeless gunpowder,
3 black powder, and ammunition [(D) CLASS B EXPLOSIVE];

4 (D) [(E)] Flammable solid Divisions 4.1, 4.2, and 4.3
5 [(DANGEROUS WHEN WET)]; or

6 (E) [(F)] Radioactive Hazard Class 7;

7 (2) [A CONSUMER COMMODITY OF A HAZARDOUS MATERIAL
8 IN A QUANTITY OF MORE THAN 1,000 POUNDS;

9 (3)] a hazardous chemical, or a hazardous material other than one
10 described in (1) of this subsection, if handled in a single day in an amount equal to or
11 greater than 10,000 [500] pounds;

12 (3) [(4) ACUTE HAZARDOUS WASTE IN A QUANTITY OF 2.2
13 POUNDS OR MORE;

14 (5) HAZARDOUS WASTE IN A QUANTITY OF 220 POUNDS OR
15 MORE; AND

16 (6)] extremely hazardous substances in a quantity equal to or more than
17 500 pounds or the threshold planning quantity, whichever is less; and

18 (4) [(7)] compressed gasses equal to or more than 1,000 [200] cubic
19 feet at standard temperature and pressure.

20 * Sec. 7. AS 29.35.510 is amended to read:

21 **Sec. 29.35.510. Inspections; penalties.** A municipality may conduct
22 inspections, and establish and impose penalties, necessary to ensure compliance with
23 reporting requirements adopted under AS 29.35.500 [AND PLACARDING
24 REQUIREMENTS ADOPTED UNDER AS 18.70.310].

25 * Sec. 8. AS 29.35.520 is amended to read:

26 **Sec. 29.35.520. Fees.** A municipality may impose appropriate fees to fully or
27 partially compensate for the cost of processing reports and administering inspections
28 under AS 29.35.500 - 29.35.510 [AND THE COST OF PROVIDING PLACARDS
29 UNDER AS 18.70.310. THE MUNICIPALITY MAY ESTABLISH A FEE
30 SCHEDULE DIFFERENT FROM THE SCHEDULE ESTABLISHED BY THE
31 DEPARTMENT OF PUBLIC SAFETY UNDER AS 18.70.310].

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1 * Sec. 9. AS 29.35.530(a) is amended to read:

2 (a) The municipality [DEPARTMENT OF PUBLIC SAFETY, DIVISION OF
3 FIRE PREVENTION], at the request of a business or government agency required to
4 submit an inventory under AS 29.35.500 [OR OF A MUNICIPALITY], shall provide

5 (1) a descriptive summary of the hazardous chemicals, hazardous
6 materials, and hazardous wastes that are required to be included in an inventory; and

7 (2) inventory forms approved by the Alaska State Emergency
8 Response Commission.

9 * Sec. 10. AS 29.35.590(6) is repealed and reenacted to read:

10 (6) "hazardous chemical" has the meaning given in 29 C.F.R.
11 1910.1200(c) except that it does not include

12 (A) a food, food additive, color additive, drug, or cosmetic
13 regulated by the federal Food and Drug Administration;

14 (B) a substance present as a solid in a manufactured item to the
15 extent exposure to the substance does not occur under normal conditions of
16 use;

17 (C) a substance to the extent it is used for personal, family, or
18 household purposes, or is present in the same form and concentration as a
19 product packaged for distribution and use by the general public;

20 (D) a substance to the extent it is used in a research laboratory
21 or a hospital or other medical facility under the direct supervision of a
22 technically qualified individual; or

23 (E) a substance to the extent it is used in routine agricultural
24 operations or is a fertilizer held for sale by a retailer to the ultimate customer;

25 * Sec. 11. AS 29.35.590(7) is amended to read:

26 (7) "hazardous material" means a material or substance, as defined in
27 49 C.F.R. 171.8, and any other substance determined by the Alaska State Emergency
28 Response Commission in regulations [DIVISION OF FIRE PREVENTION, OR BY
29 A MUNICIPALITY FOR PURPOSES OF ITS OWN REPORTING PROGRAM.] to
30 pose a significant health and safety hazard; "hazardous material" does not include food,
31 drugs, alcoholic beverages, cosmetics, tobacco, or tobacco products intended for

1 personal consumption;

2 * Sec. 12. AS 29.35.590(8) is amended to read:

3 (8) "hazardous waste" means

4 (A) a hazardous waste as defined in AS 46.03.900;

5 (B) a hazardous waste as identified by the Environmental
6 Protection Agency under 40 C.F.R. 261; [,] and

7 (C) any other hazardous waste defined by the Alaska State
8 Emergency Response Commission in regulations [DIVISION OF FIRE
9 PREVENTION OR BY A MUNICIPALITY FOR PURPOSES OF ITS OWN
10 REPORTING PROGRAM];

11 * Sec. 13. AS 46.03.308(a) is amended to read:

12 (a) Hazardous waste may not be transported in the state unless the waste is
13 accompanied by the uniform hazardous waste [A] manifest required under 42
14 U.S.C. 6922 - 6923 or other applicable federal law [AND THE GENERATOR HAS
15 DELIVERED A COPY OF THE MANIFEST TO THE DEPARTMENT BEFORE
16 THE TRANSPORTATION BEGINS].

17 * Sec. 14. AS 46.03.822(a) is amended to read:

18 (a) Notwithstanding any other provision or rule of law and subject only to the
19 defenses set out in (b) of this section, the exception set out in (i) of this section, the
20 exception set out in AS 09.65.240, and the limitation on liability provided under
21 AS 46.03.825, the following persons are strictly liable, jointly and severally, for
22 damages, for the costs of response, containment, removal, or remedial action incurred
23 by the state, a municipality, or a village, and for the additional costs of a function or
24 service, including administrative expenses for the incremental costs of providing the
25 function or service, that are incurred by the state, a municipality, or a village, and the
26 costs of projects or activities that are delayed or lost because of the efforts of the state,
27 the municipality, or the village, resulting from an unpermitted release of a hazardous
28 substance or, with respect to response costs, the substantial threat of an unpermitted
29 release of a hazardous substance:

30 (1) the owner of, and the person having control over, the hazardous
31 substance at the time of the release or threatened release; this paragraph does not apply

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1 to a consumer product in consumer use;

2 (2) the owner and the operator of a vessel or facility, from which there
3 is a release, or a threatened release that causes the incurrence of response costs, of a
4 hazardous substance;

5 (3) any person who at the time of disposal of any hazardous substance
6 owned or operated any facility or vessel at which the hazardous substances were
7 disposed of, from which there is a release, or a threatened release that causes the
8 incurrence of response costs, of a hazardous substance;

9 (4) any person who by contract, agreement, or otherwise arranged for
10 disposal or treatment, or arranged with a transporter for transport for disposal or
11 treatment, of hazardous substances owned or possessed by the person, other than
12 domestic sewage, or by any other party or entity, at any facility or vessel owned or
13 operated by another party or entity and containing hazardous substances, from which
14 there is a release, or a threatened release that causes the incurrence of response costs,
15 of a hazardous substance;

16 (5) any person who accepts or accepted any hazardous substances, other
17 than refined oil, for transport to disposal or treatment facilities, vessels or sites selected
18 by the person, from which there is a release, or a threatened release that causes the
19 incurrence of response costs, of a hazardous substance.

20 * Sec. 15. AS 18.70.310; AS 29.35.530(b), 29.35.590(2); and AS 46.03.308(b) are repealed.

21 * Sec. 16. APPLICABILITY. (a) Except as provided in (b) of this section, the provisions
22 of AS 09.65.240, enacted by sec. 1 of this Act, apply to claims for damages caused by a
23 release of a hazardous substance that are filed on or after the effective date of sec. 1 of this
24 Act.

25 (b) The provisions of AS 09.65.240, enacted by sec. 1 of this Act, do not apply to a
26 claim by a person damaged by a release of a hazardous substance that occurs before the
27 effective date of sec. 1 of this Act if the claim is filed not more than one year after the person
28 knew or should have known that the person was damaged by the release of a hazardous
29 substance.

30 * Sec. 17. The Alaska State Emergency Response Commission shall approve an inventory
31 form for use under AS 29.35.500 so that it is available for distribution to municipalities under

1 AS 29.35.530 by January 1, 1998.