

Introduced by:	Mayor
Date:	11/02/93
Hearing:	12/07/93
Postponed to:	02/01/94
Action:	Enacted as Amended
Vote:	Unanimous

**KENAI PENINSULA BOROUGH
ORDINANCE 93-56**

**AN ORDINANCE ENACTING A NEW KPB CHAPTER 10.20 TO SET OUT
REQUIREMENTS FOR THE REPORTING AND PLACARDING OF ALL
FACILITIES UTILIZED FOR STORAGE OF HAZARDOUS MATERIALS AND
HAZARDOUS WASTES**

WHEREAS, the Kenai Peninsula Borough, as any modern community, is faced with the potential for an accidental uncontrolled release or spill of a hazardous material, which could threaten the lives and property of its citizens; and

WHEREAS, in responding to a fire or other emergency, response personnel may be endangered by the unknown presence of hazardous materials within a facility; and

WHEREAS, it is in the public interest to require the placarding of facilities storing hazardous materials to inform the public of potential dangers; and

WHEREAS, the Alaska Statutes, at AS 18.70.310 and AS 29.35.500--.590 authorize a municipality to require reporting of hazardous material storage and placarding of storage facilities;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That a new KPB Chapter 10.20 "HAZARDOUS MATERIALS REPORTING AND PLACARDING" is enacted to read as follows:

CHAPTER 10.20. Hazardous Materials Reporting and Placarding.

10.20.010. Definitions.

As used in this chapter:

A. "Acute hazardous waste" means a waste listed in 40 Code of Federal Regulations (CFR) Parts 261.31, 261.32, or 261.33(e), as amended.

B. "Consumer commodity" means a hazardous material that is packaged and distributed in a form intended or suitable for retail sale for use by an individual, as defined in 49 CFR.

C. "Extremely hazardous substance" means a substance listed in the Appendices to 40 CFR Part 355.

D. "Facility" means any land, building, equipment, structure, stationary item or combination thereof, not a transshipment facility, that is located on a single site or on contiguous or adjacent sites owned, leased, operated or otherwise controlled by the same person, other than a residential dwelling.

E. "Handles" means disposes of, generates, processes, stores, treats, or uses.

F. "Hazard category" means the five physical or health classes defined in 40 CFR Part 370.2.

G. "Hazard class" means the class of hazardous materials authorized for transportation by 49 CFR Subchapter C.

H. "Hazardous chemical" means any hazardous chemical as defined under 29 CFR Part 19100.1200(c).

I. "Hazardous material" means a material subject to 49 CFR Subchapter C, including those (1) defined at 49 CFR Part 171.8 or 171.11, as amended; or (2) listed in the Hazardous Materials Table at 49 CFR Part 172.101 or 172.102, as amended, for any transportation mode; and (3) any other substance determined by the Alaska Department of Public Safety, Division of Fire Prevention to pose a significant health and safety hazard. Hazardous material does not include food, drug, alcoholic beverages, cosmetics, tobacco, or tobacco products intended for personal consumption.

J. "Hazardous waste" means a waste as defined in 40 CFR Part 261, as amended.

K. "Person" means the owner, operator, or manager of any entity or any other individual in charge handling hazardous materials, hazardous chemicals, or hazardous wastes, and includes, but is not limited to, individuals, trusts, corporations (including government corporations), partnerships, joint ventures, or a state or political subdivision thereof.

L. "Tier II Inventory Form" means the hazardous chemical inventory form set forth in 40 CFR Part 370.41, as amended.

M. "Threshold planning quantity" means the quantity for an extremely hazardous substance defined in 40 CFR Part 355, as amended.

N. "Transshipment Facility" means any land, building, equipment, structure, stationary item, or combination thereof that is located on a single site or on contiguous or adjacent sites owned, leased, operated or otherwise controlled by the same person whose principal business consists of the handling of materials including handling hazardous materials or hazardous wastes while such materials remain in the stream of interstate, intrastate or international commerce.

10.20.020. Reporting Requirements.

A. The reporting requirements of this section shall only apply if the following quantities are handled at a facility, other than a transshipment facility on any day during a calendar year:

1. Any quantity of a hazardous material of the following Hazard Class or the International Civil Aviation Organization (ICAO)/International Maritime Organization (IMO) equivalents:

- (a) Class 2.2 (Poison A);
- (b) Class 6.1 (Poison B);
- (c) Class 1.1 and 1.2 (Class A explosive);
- (d) Class 1.3 (Class B explosive);
- (e) Class 4.3 (Flammable solid (dangerous when wet)); or
- (f) Class 7 (Radioactive).

2. A hazardous material or hazardous chemical other than one described in subsection A.1 of this section in an amount equal to or greater than 500 pounds;

3. An extremely hazardous substance in an amount equal to or greater than 500 pounds or the threshold planning quantity, whichever is less;

4. A hazardous waste in an amount equal to or greater than 220 pounds;

5. An acute hazardous waste in an amount equal to or greater than 2.2 pounds;

6. A consumer commodity of a hazardous material or hazardous chemical in an amount equal to or greater than 1,000 pounds at a facility longer than 14 days, other than a transshipment facility, prior to placement for display or sale.

B. A person who handles "hazardous materials", "hazardous chemicals", "hazardous wastes", or "consumer commodities", as defined in this Chapter, shall submit a report to the Borough Office of Emergency Management (hereinafter KPBOEM) on a form approved by that Office, which shall include (but may not be limited to) the following:

- 1. Facility name and address;
- 2. Owner/Operator name and address;
- 3. Emergency contact names and phone numbers;
- 4. EPA Hazardous Waste Number for each hazardous waste;
- 5. Characteristic for each hazardous waste (ignitable, reactive, corrosive or toxic);
- 6. Maximum daily and average daily quantities handled during the reporting period and number of days handled on-site;
- 7. Site layout and floor plan showing the usual and ordinary location of each hazardous waste.

10.20.030. Exceptions.

A. The Borough may except by regulation certain hazardous materials listed in the Hazardous Materials Table at 49 CFR Part 172.101, or 172.102 from the requirements of this chapter upon determination that the materials do not pose a significant health or safety hazard. The KPBOEM shall maintain a list of the materials excepted from the reporting requirements for public review.

B. The Borough may adopt regulations requiring that a person report smaller quantities of a hazardous material, hazardous chemical or hazardous waste than specified in this chapter upon a determination that the smaller quantity poses a significant health or safety hazard.

C. This chapter shall not apply to any hazardous material, hazardous chemical or hazardous waste or consumer commodity possessed by an individual for his personal, family or household use.

10.20.040. Reporting schedules.

A. A person who is required to submit a report pursuant to Section 10.20.020 or 10.20.030 shall submit that report by July 1, 1994 for every transshipment facility and facility in operation on January 1, 1994, and no later than March 1, of each year thereafter. The reporting period shall be for the previous calendar year.

B. A person not subject to the reporting requirements of this Chapter as of the dates set out by paragraph A, who subsequently becomes subject to the terms of the reporting requirements, shall submit the information required within 30 days after commencement of handling of hazardous wastes, materials or chemicals and shall update the information by March 1 of each year thereafter. The initial report may be a projection of activities for the following calendar year.

10.20.050 Report updating.

A. A person required to make a report by Section 10.20.020 for a facility, other than a transshipment facility, shall report each significant change to the most recently submitted site layout or floor plan showing the change in storage location for a hazardous material, hazardous chemical, or hazardous waste to the KPBOEM by telephone within 24 hours and in writing within 30 days after each such change.

B. A person required to make a report by Section 10.20.020 for a facility, other than a transshipment facility, shall update the annual inventory report whenever a hazardous material, hazardous chemical, or hazardous waste of a reportable quantity of a new hazard category is handled at a facility. Such a report shall be made by telephone within 24 hours and in writing within 10 days of receipt of the additional hazardous material, hazardous chemical, or hazardous waste in the new hazard category.

10.20.060 Placarding requirements.

A. A person who handles hazardous materials, hazardous chemicals, hazardous wastes, or consumer commodities at a facility, other than a transshipment facility, in an amount equal

to or greater than the quantities specified in Section 10.20.020 shall post placards that give adequate warning to the public and to emergency response personnel of the type of hazardous materials, hazardous chemicals, or hazardous wastes handled. Placards will be provided at no charge by the KPBOEM.

B. A placard shall meet the standard specifications for size, lettering, numbers, colors, and symbols established by the National Fire Protection Association (NFPA) for the 704 M system, unless an alternative placard has been approved for use by the KPBOEM.

C. The KPBOEM shall determine which numbers and symbols shall be contained on placards for facilities, based on the inventory reports submitted in accordance with this chapter. Where a facility contains more than one class of hazardous materials, hazardous chemicals, or hazardous wastes, the placard shall be based on the hazardous material, hazardous chemical, or hazardous waste with the most severe degree of hazard.

D. Placards shall be placed as provided in this section:

1. Unless alternative placarding locations have been approved in accordance with this subsection, placards shall be posted as follows:

a. One placard shall be displayed on the exterior wall adjacent to the main street entrance;

b. At least one placard shall be displayed on each side of the structure for which there is an entrance other than the main entrance;

c. Each placard shall be posted on the latch side of the door. In the case of double door, the placard shall be displayed to the right side of the door;

d. Each placard shall be posted within 24 inches of an entrance and placed at a height of 4.5 to 5.5 feet above the bottom edge of the entrance;

e. No other sign shall be placed within 6 inches of any placard;

f. Placards shall be securely mounted and maintained in such condition as to be easily read.

2. A request for alternative placard locations, different than those described in subsection E.1 and E.3 of this section, shall be submitted to the KPBOEM with an annual report or modification thereof. The request shall state the reasons why the location standards or approved alternative locations in this chapter should not apply or are otherwise inappropriate, and describe a proposed alternative placard location and explain how the alternative location will give adequate warning to the public and emergency response personnel. The alternative placard location may be used only following receipt of written approval by the KPBOEM.

3. Subject to the written approval of the KPBOEM, the following alternative placard locations to those described in subsection E.1 of this section may be used:

a. Multiple-story Buildings with Interior Fire Panels: Placards may be posted at the interior fire panels showing the specific floors on which hazardous materials, hazardous chemicals, or hazardous wastes are handled and the appropriate placard designations for each floor;

b. Retail Establishments: A placard does not need to be adjacent to the main customer entrance provided that the placard can be placed at a location on the exterior wall in a manner giving adequate warning to the public and emergency response personnel.

E. The KPBOEM may require a specific area or room within a facility to be placarded upon a request by a facility or upon determination that the type or location of hazardous materials, hazardous chemicals, or hazardous wastes may pose a significant health or safety threat to emergency personnel if the specific area or room is not placarded.

F. A person shall post the placards, as designated by this section or by the KPBOEM, within 30 days of receipt of notification.

G. Placards shall be removed within 24 hours after hazardous material, hazardous chemicals, or hazardous wastes are no longer being handled at a facility.

10.20.070. Transshipment facility requirements.

A. A person who handles hazardous materials, hazardous chemicals, hazardous wastes or consumer commodities at a transshipment facility shall submit a report in accordance with the schedule stated at Section 10.20.040 on a form prescribed by the KPBOEM which shall include (but may not be limited to) the following:

1. Transshipment facility name and address;
2. Owner and operator names and addresses;
3. Emergency contact names, titles and phone numbers;
4. A list of all hazard classes handled at the transshipment facility;
5. Site layout and floor plan showing the usual and ordinary locations of hazardous waste and hazardous material at the transshipment facility;
6. The method of marking or warning used.

B. A person required to submit a report pursuant to subsection A of this section shall:

1. Update that report within 30 days after a new hazard class has been handled or a change in the marking or warning system used at the transshipment facility; and
2. Report each change to the most recently submitted site layout and floor plan showing the changes in the usual and ordinary storage location for a hazardous material or hazardous waste to the KPBOEM in writing within 30 days after each such change.

C. A person who operates a transshipment facility shall display markings and warnings under one of the following categories:

1. Mark the immediate area to be used for hazardous materials or hazardous wastes handling with a conspicuous sign reading "Hazardous Materials," using block letters a minimum of 3 inches in height with a half-inch strike on a white background; or
2. Display hazardous materials labels or placards in accordance with DOT requirements to identify the commodities present; or
3. Display placards in accordance with Section 10.20.060; or
4. Display such other placards, warnings, or markings as the KPBOEM may require or allow in writing following his determination that such additional or alternative action will reasonably protect the public safety.

D. Transshipment facilities are not subject to the requirements related to reporting and placarding contained in this chapter except those set forth in Section 10.20.020 and 10.20.070.

10.20.080. Enforcement.

A person who violates any provision of this chapter shall be subject to civil penalties, injunctive relief, or both. The owner, agent, contractor, lessee or tenant of any part of a structure or premises in which a part of a violation of this Chapter shall exist, is guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$300.00. Each and every day that a violation continues shall be deemed a separate and distinct violation.

10.20.090. Budget.

Funding for the purchase of placards shall be budgeted from Borough nonarea-wide fund sources. Each Borough emergency service area, as a part of its pre-fire planning, shall assist in assuring that the reporting requirements of this Chapter are met, and shall assist in the distribution of and inspection for proper posting of the placards required under this Ordinance, within its own respective jurisdiction.

10.20.100. Non-area-wide application.

The provisions of this chapter shall only apply in areas of the borough outside cities unless a city has transferred the necessary authority to the borough or one of its service areas and the assembly has accepted the transfer.

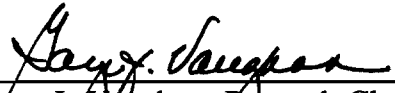
SECTION 2. The Mayor is requested to seek agreements with any cities within the Borough which enact hazardous materials reporting and placarding requirements, and with any State certified fire protection organization located within the Borough, to provide for cooperative administration of these programs under the zone emergency management program.

SECTION 3. That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 1st
DAY OF FEBRUARY, 1994.**


Betty J. Glick, Assembly President

ATTEST:


Gaye J. Vaughan, Borough Clerk