

**ALASKA STATE LEGISLATURE**  
**SENATE RESOURCES STANDING COMMITTEE**

February 12, 2018

3:30 p.m.

**MEMBERS PRESENT**

Senator Cathy Giessel, Chair  
Senator John Coghill, Vice Chair  
Senator Natasha von Imhof  
Senator Bert Stedman  
Senator Kevin Meyer  
Senator Bill Wielechowski  
Senator Click Bishop

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 86

"An Act relating to the sale or other disposal, leasing, or encumbrance of Alaska Railroad Corporation land; and providing for an effective date."

- MOVED CSSB 86 (RES) OUT OF COMMITTEE

SENATE BILL NO. 173

"An Act relating to the liability of a person or the state for the release of certain pesticides during application on a utility pole."

- HEARD & HELD

SENATE BILL NO. 92

"An Act relating to abandoned and derelict vessels; relating to the registration of vessels; relating to certificates of title for vessels; relating to the duties of the Department of Administration; relating to the duties of the Department of Natural Resources; establishing the derelict vessel prevention program; establishing the derelict vessel prevention program fund; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 86

SHORT TITLE: ALASKA RAILROAD CORPORATION LAND

SPONSOR(s): SENATOR(s) COGHILL

03/10/17	(S)	READ THE FIRST TIME - REFERRALS
03/10/17	(S)	RES, FIN
04/07/17	(S)	RES AT 3:30 PM BUTROVICH 205
04/07/17	(S)	Heard & Held
04/07/17	(S)	MINUTE(RES)
02/09/18	(S)	RES AT 3:30 PM BUTROVICH 205
02/09/18	(S)	Heard & Held
02/09/18	(S)	MINUTE(RES)
02/12/18	(S)	RES AT 3:30 PM BUTROVICH 205

BILL: SB 173

SHORT TITLE: LIABILITY: PESTICIDES & UTILITY POLES

SPONSOR(s): SENATOR(s) MICCICHE

02/02/18	(S)	READ THE FIRST TIME - REFERRALS
02/02/18	(S)	RES
02/12/18	(S)	RES AT 3:30 PM BUTROVICH 205

**WITNESS REGISTER**

KARL GOHLKE, representing self  
Fairbanks, Alaska

**POSITION STATEMENT:** Supported CSSB 86 (RES).

BARBARA BLAKELY, representing herself  
Sterling, Alaska

**POSITION STATEMENT:** Had concerns with SB 86.

BILL O'LEARY, President and CEO  
Alaska Railroad Corporation (ARRC)  
Anchorage, Alaska

**POSITION STATEMENT:** Commented on SB 86.

JOHN COOK, Chair  
Board of Directors  
Alaska Railroad Corporation (ARRC)  
Fairbanks, Alaska

**POSITION STATEMENT:** Commented on SB 86.

SENATOR MICCICHE

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 173.

KRISTIN RYAN, Director  
Spill Prevention and Response (SPAR)  
Department of Environmental Conservation (DEC)  
Anchorage, Alaska

**POSITION STATEMENT:** Supported SB 173.

RACHEL HANKE, staff to Senator Micciche  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Commented on SB 173 for the sponsor.

BRAD JANORSCHKE, General Manager  
Homer Electric Association  
Homer, Alaska

**POSITION STATEMENT:** Supported SB 173.

DALLIN BROOKS, Vice President  
North American Wood Pole Council  
Vancouver, Washington

**POSITION STATEMENT:** Supported SB 173.

ERIC ERIKSEN, Vice President  
Alaska Electric Light and Power (AEL&P)  
Juneau, Alaska

**POSITION STATEMENT:** Supported SB 173.

PHIL STEYER, Director  
Government Relations  
Chugach Electric Association  
Anchorage, Alaska

**POSITION STATEMENT:** Supported SB 173.

CRYSTAL ENKVIST, Executive Director  
Alaska Power Association  
Anchorage, Alaska

**POSITION STATEMENT:** Supported SB 173.

DON MCNAMARA  
Oceanside Farm  
Homer, Alaska

**POSITION STATEMENT:** Opposed SB 173.

DONNA RAE FAULKNER

Oceanside Farm  
Homer, Alaska

**POSITION STATEMENT:** Commented on SB 173.

ROBERT HIMSCHOOT  
Nushagak Electric and Telephone Cooperative  
Dillingham, Alaska

**POSITION STATEMENT:** Supported SB 173.

EDDIE TAUNTON, Director of Operations  
Matanuska Susitna Electric  
Palmer, Alaska

**POSITION STATEMENT:** Supported SB 173.

#### **ACTION NARRATIVE**

[3:30:14 PM](#)

**CHAIR CATHY GIESSEL** called the Senate Resources Standing Committee meeting to order at 3:30 p.m. Present at the call to order were Senators Coghill, Bishop, Stedman, Meyer, Wielechowski, and Chair Giessel.

#### **SB 86-ALASKA RAILROAD CORPORATION LAND**

[3:30:36 PM](#)

CHAIR GIESSEL announced SB 86 to be up for consideration. [CSSB 86(RES), version 30-LS0487\J, was before the committee.] Public testimony was opened at the last meeting.

[3:31:32 PM](#)

KARL GOHLKE, representing self, Fairbanks, Alaska, supported CSSB 86 (RES). He said the Alaska Railroad Corporation (ARRC) has lost three iterations of seasoned employees because of a loss in revenue. A few factors have contributed to the loss in revenue, but the biggest one is the slowdown on North Slope production followed by the closing of the Flint Hills Refinery and the loss of export contracts for Usibelli Coal Mine. SB 86 is a solution that will allow the ARRC to generate more revenue and revitalize communities along the Railbelt.

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BARBARA BLAKELY, representing herself, Sterling, Alaska, had concerns with SB 86. She explained that she and her husband operate a business in Soldotna and own a condominium in Whittier Manor in the City of Whittier and she sits on its board. She referenced a letter from her board and followed up with a few

comments and encouraged them once again to consider Whittier Manor's situation when voting on this bill.

One of their concerns is that with no sale of their land or long-term lease to their association that their property values are decreasing at an alarming rate. When the city gave them a draft of the 15-year lease to consider, it included a clause that they would have first right of refusal. That makes them a little nervous. If that land should ever be sold or traded, the Whittier Manor Condo Association should have first right of refusal.

MS. BLAKELY explained that a large percentage of full-time Whittier residents live in Whittier Manor. It's hard to imagine the railroad ever kicking them out of their homes. That makes it hard to understand the railroad being so adamant about not selling to them. In Friday's hearing she understood the railroad to say it wanted to sell property that is not income producing. Whittier Manor pays lease payments regularly, but if the railroad's intent is to make money, why would they turn a percentage of their lease income over to the City of Whittier?

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SENATOR COGHILL thanked her for bringing this issue to their attention and asked if their lease is held by the condo association or by the City of Whittier, because language says to offer the leaseholders the right of first refusal on page 7, line 4, subsection 2.

MS. BLAKELY dropped off line.

CHAIR GIESSEL said Senator Coghill would get back to her on that.

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CHAIR GIESSEL finding no further comments, closed public testimony on SB 86.

SENATOR WIELECHOWSKI asked who has title over this land: ARRC or the State of Alaska (SOA).

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BILL O'LEARY, President and CEO, Alaska Railroad Corporation (ARRC), answered that the railroad has title to the land.

SENATOR WIELECHOWSKI said he pulled up the statute 45 U.S.C.S. 1203 (1982), which says "subject to the provision of this title,

the United State shall transfer all rail properties of the Alaska Railroad to the state." He asked if the title was transferred to the ARRC sometime after that.

MR. O'LEARY replied this was in 1982, and the ARRC was not created until 1984 or 85. That is when the transfer from the state occurred.

SENATOR WIELECHOWSKI asked how a sale of property would work. Would the state have the ability to appropriate the funds or would the ARRC do as it wished with them?

MR. O'LEARY replied that currently it is envisioned that those monies would remain with the ARRC for its own purposes.

SENATOR WIELECHOWSKI asked if the timeframe for the right of first refusal should be clarified in the statute.

MR. O'LEARY answered there is nothing in the bill at this point about a timeframe. He suggested using 60 or 90 days.

[3:42:12 PM](#)

JOHN COOK, Chair, Board of Directors, Alaska Railroad Corporation (ARRC), Fairbanks, Alaska, added it is not their intent to sell any lands currently leased by an existing leaseholder unless they want to do it. And at a minimum, there is a 30-day public notice provision. They have no desire to sell income-producing lands to a third party who would then be the lessor.

SENATOR WIELECHOWSKI stated that the state has a constitutional public trust obligation to manage lands in the state's best interest, and these are state lands that were conveyed by the U.S. government. Would he object to have a requirement for state and/or local review before any proposed sale, lease or encumbrance?

MR. COOK answered best interest findings are in several areas of the statute to for the state to get fair market value for these lands. Having an additional review phase beyond the public notice will delay transactions from happening in a "reasonably timely manner."

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SENATOR WIELECHOWSKI said this language protects the railroad but doesn't necessarily protect the people of Alaska.

SENATOR STEDMAN said he understands why the ARRC doesn't want to deal with possible legislative encumbrances, because it convenes every winter and not 365 days a year like their board does, but he didn't see where the legislature historically has been overly cumbersome to the railroad in disposal of properties, and he didn't understand why they can't come in with bundled transactions or why they haven't brought in projects that are "ripe" for economic development earlier for legislative approval for liquidation.

MR. COOK responded that there are a number of practical issues with those suggestions, but telling the public in general and commercial entities (developers) that a legislative process is involved and that means they may or may not be able to have their land at the conclusion of the legislature - maybe it won't even happen - has served as a deterrent in the past. Another impediment is what happens if someone comes to the railroad and expresses interest in a piece of property that they haven't identified, and it's on day 89 of the legislature or the day after adjournment. It ties the railroad's hands in terms of being timely and responsive.

SENATOR STEDMAN asked why the legislature can't pre-authorize the railroad in advance of any developer having a proposal that would allow them to do a private market transaction on a particular parcel like the one in Fairbanks that is up for residential development. Normally, when there is developable property more than one entity recognizes it. The Fairbanks property has been brought before this committee several times and is a known development site.

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MR. COOK responded that Chena Landing residential development is an easy transaction that would work under the scenario Senator Stedman described, but he develops commercial real estate for a living, and one never knows what will walk through the door. For instance, one of the transactions he is in negotiations over includes a fee simple sale of a parcel near Healy that would be used for a hotel development. If pursued it would be a \$30-40 million private sector investment. That is an opportunity he would not have been able to contemplate six months ago. Some would fit into the scenario Senator Stedman described and some just wouldn't.

SENATOR VON IMHOF said this bill has a three-year sunset as a built-in limitation. However, she offered that maybe they could limit the number of transactions over the next three years to

three deals (hypothetically) just for a sense of a pilot project type of finite timeframe and activity. But she is comfortable with the three-year sunset.

[3:51:31 PM](#)

SENATOR COGHILL moved to report CSSB 86(RES), version 30-LS0487\J, from committee with individual recommendations and attached zero fiscal note.

SENATOR WIELECHOWSKI objected. He commented that he has significant concerns with this bill and agreed with Senator Stedman that he didn't understand why these properties couldn't be bundled and come before the legislature for approval. It has been done many times in the past. He worries this is a significant amount of land - 18,000 acres - some of which is prime real estate all across Alaska. The State of Alaska has a trust obligation under the Alaska Constitution to manage that for the best interests of the people of Alaska. The statute, 45 U.S.C.S. 1203, specifically provides that this land was provided to the State of Alaska.

A 2009 Supreme Court case, Southeast Alaska Conservation Council v. State of Alaska, is very similar to this one. In that case, the legislature passed two pieces of legislation conveying 250,000 acres to the University of Alaska and the net proceeds were to be used for an endowment trust. A lawsuit ensued, and the Supreme Court held that it was an illegal dedication of state assets and violated the state dedicated funds clause.

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He cited a Legislative Legal opinion stating a provision in 45 U.S.C.S. 1207 says: "Revenues generated by the state-owned railroad shall be retained and managed by the state-owned railroad for railroad and related purposes." He wasn't sure that applies to land but had asked for a legal opinion. However, a 1984 Attorney General's opinion concluded dedication of land to the railroad to allow them to do with as they please would be a violation of the dedicated funds clause of the Constitution. He is worried about the future impacts of this legislation, because the state would be giving up its authority of this potentially significant right of way. The railroad may never have to come before the legislature again on this.

SENATOR WIELECHOWSKI said a process is in place for management of this land, and it has worked in the past. There should be some state and local review of a proposed sale, lease, or encumbrance and there should be some sort of timeframe on right

of first refusal. Probably 15 or 30 days is not enough for someone to come up with a significant amount of money to purchase land. As Senator Von Imhof mentioned, maybe there could be a pilot project.

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SENATOR WIELECHOWSKI removed his objection and said he would mark an "N" on the bill report.

CHAIR GIESSEL, finding no further objections, announced that CSSB 86(RES) had moved from the Senate Resources Standing Committee.

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At ease

### **SB 173-LIABILITY: PESTICIDES & UTILITY POLES**

[3:58:04 PM](#)

CHAIR GIESSEL announced consideration of SB 173. This bill proposes aligning Alaska with liability protections for utilities with other states. The subject is pesticides and power poles.

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SENATOR MICCICHE, Alaska State Legislature, sponsor of SB 173 said this bill came about from an incident when an enthusiastic federal employee discovering some pesticide seepage in the area of a utility pole during a highway project. It was brought to his attention that Alaska law doesn't match federal law. The reason for bringing this forward is the financial protection of nearly every Alaskan ratepayer who depends upon a utility to have electricity delivered to their home, business, or facility. SB 73 conforms Alaska law with federal law with respect to wood poles treated with a pesticide registered with the Environmental Protection Agency (EPA). He commented:

Yes, the feds are ahead of us on this. Just think about the potential liability across the country if every utility pole that has seepage of this pesticide is required to be a cleanup site.

He explained that every wooden pole is factory treated with a preservative pesticide, which prolongs the service life of the pole by protecting it from organisms that compromise its structural integrity. It would be logical to assume that soil

coming in direct contact with that treated pole would have some traces of that preservative.

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SENATOR MICCICHE said SB 173 matches federal law that has a specific exemption for the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). It clarifies and eliminates the assumption of liability and remediation costs for trace elements including a federal exemption within Alaska statutes.

He said that the Department of Environmental Conservation (DEC) is working with utility companies so that they can provide a best practice guidance for use, replacement, and disposal of preservative-treated utility poles to reduce or eliminate future contamination when poles are retired. This bill is narrowly drafted to apply only to wood utility pole installed, removed, or used by public utilities in connection with providing a utility service in the state.

SENATOR WIELECHOWSKI asked if any studies have been done on the impacts of pentachlorophenol on the health of fish or humans or the ability of pentachlorophenol to migrate through the ground.

KRISTIN RYAN, Director, Division of Spill Prevention and Response (SPAR), Department of Environmental Conservation (DEC), Anchorage, Alaska, answered yes, The EPA had done extensive testing on pentachlorophenol, which is the product that is used to treat utility poles so that they last longer. That data is available. Because it is a registered pesticide, the manufacturer is required to submit updated toxicology information (for all pesticides) to the EPA every five years. It is a very thorough process to assure that they are used in the safest way possible and serve only the purpose that they are intended to serve. This product is classified as a human carcinogen and it is harmful to fish.

However, Ms. Ryan said, the question is if the product leaks off the pole in quantities to cause harm to human health or other species, and that is a varied question, and the department is getting data on that now. The technology used reduces the amount of leeching on the poles if they have been treated correctly. The EPA has decided that it can be used in a situation with limited impact upon the environment as long as it's not leeching off the pole.

SENATOR WIELECHOWSKI asked for any information she could provide on the health effects and contamination issues with streams, rivers, and drinking supplies. He also asked if any states or countries that have banned pentachlorophenol for this use.

MS. RYAN answered she was not aware of anyone who had banned pentachlorophenol, which is not the drug, PCP (the department uses the shorthand "Penta" to distinguish). The manufacturing process is really key to making sure the product doesn't leech from the pole. It's about making sure the manufacturing process follows EPA guidelines, which is the whole point of EPA regulating the product.

SENATOR STEDMAN asked her to explain the difference between the old creosote poles and the new ones that are pressure injected and how they interplay in this bill.

MS. RYAN answered that she wasn't prepared to provide a detailed comparison to the committee today, but she would see what could be found and provide it later. From a general perspective, pentachlorophenol, if applied correctly, is less likely to leave the pole and contaminate the surrounding environment, which is why utilities are required to use this product.

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SENATOR STEDMAN said these poles are being used in a marine environment, and he wanted to know how this bill protects them in that case. He didn't want to leave any groups out.

MS. RYAN responded she would research that issue, but he is on the right track that this is preferred method in many situations. The state of Vermont did an extensive analysis of the use of wood poles: the best places, the best conditions, and what should be done if they have to be removed. They have shared those best practices with the Alaska Energy Authority (AEA) and asked to have a dialogue about whether they would be applicable practices in Alaska, too. That dialogue has just started.

SENATOR WIELECHOWSKI said language on page 1, line 8, provides an exemption for release of a pesticide registered under 7 U.S.C. 136(a) and asked her perspective on limiting that to pentachlorophenol instead of the entire gamut.

MS. RYAN replied that the intent of the bill is to be consistent with federal law, and that is how the federal exemption currently exists. Pesticides add a pollutant to the environment for a specific purpose. That obviously is in conflict with other

federal laws that say you cannot pollute the environment. The fix is that if you apply pesticides that are approved under FIFRA, that is meeting federal law and is, therefore, exempt from other laws that say you cannot pollute the environment. The catch is that use of products registered under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) are very restricted.

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RACHEL HANKE, staff to Senator Micciche, Alaska State Legislature, provided a short sectional analysis of SB 173. Section 1 adds a new section to Title 9 under Actions, Immunities, Defenses, and Duties that releases the state and persons from liability for costs and damages for the release of a pesticide registered under the FIFRA that is used to treat wood utility poles.

Section 2 adds cross-references to the new section in Title 46.

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BRAD JANORSCHKE, General Manager, Homer Electric Association, Homer, Alaska supported SB 173. He said it affects all public utilities in Alaska, and the issue comes from the lack of statutory clarity regarding the treatment of wood utility poles.

Recent events on the Kenai Peninsula have raised potential for soils surrounding each pole to be treated as a contaminated site when it is removed from service. He explained that over 250,000 treated utility poles have been installed all over Alaska. They are less expensive than steel, fiberglass, or concrete, are a renewable resource, and blend in with the environment more readily than the other options. Today the poles are treated with pentachlorophenol (Penta), an EPA registered pesticide. Properly applied, Penta treated poles are supposed to have minimal pesticide migration from the pole to the environment directly surrounding the pole. It is the minimal migration that potentially makes the site contaminated under current Alaska law. If it were characterized as a contaminated site, Homer Electric has been informed the cost to remove and a single utility pole from service and mitigate the site would cost about \$30,000.

The provisions of AS 46.03.822(a) if strictly read can be interpreted as making a public utility that installs treated poles liable for cleanup of any residual preservative a retired or existing utility pole. This liability does not exist under federal law or in any other state, as far as he is aware.

MR. JANORSCHKE said the purpose of the proposed legislation is to bring Alaska in alignment with the rest of the country; it is drafted narrowly and intended to apply potential liability stemming from installing or removing a wood utility pole. He said HEA has been actively engaged with the Department of Environmental Conservation (DEC) for two years. His concern is not with DEC but the law that they are required to operate under. He closed saying:

As an aside, kudos to ADEC as they have recently taken a positive step forward by inviting members of our state-wide organization (Alaska Power Association) to participate in the development and implementation of best management practices for the handling, storage, use, and retirement of treated utility poles, something that has been successfully been done in at least one other state.

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SENATOR STEDMAN said in his area [Ketchikan] they have to do "off island disposal" and ship contaminants to Washington on special barges. He asked how the Knik and Fairbanks areas dispose of their retired utility poles.

MR. JANORSCHKE answered that for the Kenai Peninsula it is very common to retire poles that are 40 years old; often they can be in great shape. They have a waiting list of members who take used poles. The unusable ones get taken to the landfill.

SENATOR STEDMAN asked what would be done with contaminated material if this bill doesn't pass.

MR. JANORSCHKE answered that he has been told by his environmental consultant that they would be required to excavate the area and bag the soil. It would have to get shipped to the Lower 48 for processing which is the bulk of the \$30K per pole cost.

SENATOR WIELECHOWSKI asked if Penta is the only pesticide they use on their poles.

MR. JANORSCHKE replied that it is the only one to his knowledge. It's possible that there may be some old poles with creosote.

SENATOR WIELECHOWSKI said he would like to know what other utilities use going forward.

[4:22:49 PM](#)

DALLIN BROOKS, Vice President, North American Wood Pole Council, Vancouver, Washington, supported SB 173. Today, there are 160 million wood poles in North America. It is the backbone of our country's energy infrastructure, because growing a tree is a simple process. Once it is made into a pole, preservative is applied. A pole also stores carbon, offsetting fossil fuel use, and provides a protection against weather. Wood poles have low environmental impact when compared to composite materials such as steel, fiberglass, and concrete. It uses less energy and less resources, so it is important to keep our forests sustainable.

Furthermore, wood won't corrode, Mr. Brooks said, and preservative treatment protects it against the natural enemies of insects, moisture, and fungi. With a responsible maintenance program, wood poles cost less than 4 percent per decade and can last 75 years or longer. Wood poles boast a low thermal expansion coefficient and low electrical conductivity. In the case of a utility pole, this means a thermally stable product that requires less insulating hardware.

Due to the insulating properties of wood, birds can rest and perch on a wood cross arm without being electrocuted. Wood poles allow for easy climbing using techniques that are well understood by linemen and uses equipment that is common and inexpensive. Because wood poles don't have special climbing hardware, a lineman can quickly attach gaffs and climb a pole without delay, snow or shine, and surveys show that they overwhelmingly prefer to climb a wood pole.

MR. BROOKS said the strength and resilience of wood with the penetration of protective treatments enables wood poles to withstand demanding service conditions like the ones experienced in Alaska.

MR. BROOKS closed saying that they as an industry support this bill to ensure that wood poles have a level playing field with other materials as they continue to be installed and removed corresponding to the changing infrastructure demands. The preservative does move down the pole over time; that is what it is intended to do as the ground line is where most biological attacks happen. Extensive studies have been conducted to show that while protecting the wood pole from targeted organisms the pole offers minimal risk to humans and the environment.

He was once asked by a reporter why wood poles are used in the 21st Century, and the answer is simple: they are the lowest cost, lowest environmental impact, best performing product that is out there today. And wood poles will be used in the 22nd century, because the wood poles they install today will last that long, and the wood poles that are going to last that long will have a new tree grown in that time to replace it.

[4:26:59 PM](#)

SENATOR BISHOP asked what he does for research and development (R&D) in preservatives in looking forward to the 21st Century.

MR. BROOKS answered that the industry continues to work hard to improve its products and research is done mainly through environmental performance co-ops. But by nature, these preservatives are intended to target organisms to prevent them from degrading and decaying the wood.

SENATOR WIELECHOWSKI asked if the EPA had done any testing on pentachlorophenol to determine whether it is toxic to humans or animals.

MR. BROOKS answered yes, EPA has done extensive testing and found that it is very low risk. He offered to share quotes from the EPA reregistration eligibility decision.

[4:28:51 PM](#)

SENATOR WIELECHOWSKI asked if they found it was toxic to humans.

MR. BROOKS in reply read from page 30 of the reregistration eligibility decision:

Because of the demonstrated tendency for pentachlorophenol to absorb to soils and the moderately rapid degradation of the compound in the environment, it is not likely that ground water contamination will result in the usage of utility poles.

He said there are other instances of stating there is no concern for mammals or humans.

SENATOR WIELECHOWSKI asked for a copy of the decision.

CHAIR GIESSEL asked him to provide it to the committee aide who would distribute it to the full committee.

[4:29:25 PM](#)

SENATOR WIELECHOWSKI asked if there are any instances of ground water or well water contamination from Penta.

MR. BROOKS replied that he knows of two instances in Vermont, where utility poles were installed right next to a shallow well, which is why Vermont now has the best management practices.

SENATOR WIELECHOWSKI asked if that instance was from an isolated pole or group of poles.

MR. BROOKS replied that it was an isolated incident from the installation of one pole.

SENATOR WIELECHOWSKI asked if trace amounts were found in the water or a significant amount.

MR. BROOKS replied trace amounts.

CHAIR GIESSEL asked him to provide the information about the Vermont incident.

MR. BROOKS said he would be happy to, but it is mostly in the Vermont Study report that is available.

[4:30:46 PM](#)

SENATOR WIELECHOWSKI asked if other states or countries ban Penta.

MR. BROOKS answered that he is aware of other countries that do not use pentachlorophenol and ban it. Europe has never used it; it uses other preservatives.

SENATOR WIELECHOWSKI asked how many countries have banned it.

MR. BROOKS said he didn't know; it is up to each country.

SENATOR WIELECHOWSKI asked if there is a Stockholm convention that discusses this issue.

MR. BROOKS answered yes.

SENATOR WIELECHOWSKI asked to get a copy.

MR. BROOKS replied that he would do that.

[4:31:58 PM](#)

CHAIR GIESSEL opened public testimony.

ERIC ERIKSEN, Vice President, Transmission and Distribution, Alaska Electric, Light and Power (AEL&P), Juneau, Alaska, supported SB 173. He said this is their 125th year of operating in Juneau and over that time they have provided safe, reliable, renewable, low-cost, electric service to the community. Juneau has over 4500 poles supporting over 200 miles of power lines. It is his opinion that treated wood utility poles have been and will be the best performing solution for carrying electrical conductors for the foreseeable future.

SENATOR STEDMAN asked if there are any rain forest issues with this preservative versus desert areas.

MR. ERICKSON answered he was not aware of any issues.

[4:34:56 PM](#)

PHIL STEYER, Director, Government Relations, Chugach Electric Association, Anchorage, Alaska, supported SB 173. He said they are a member-owned electric co-operative providing service to about 68,000 members at 84,000 metered locations. They have about 900 miles of overhead distribution line supported by treated wooden poles.

CRYSTAL ENKVIST, Executive Director, Alaska Power Association (APA), Anchorage, Alaska, supported SB 173. She explained that APA is the statewide trade association for electric utilities in Alaska. The members provide power to a half million Alaskans in all parts of the state.

MS. ENKVIST said Alaska has hundreds of thousands of utility poles that use a pentachlorophenol regulated by FIFRA. Each year, many utility poles are retired and removed from the ground. The EPA through its FIFRA regulations provide significant oversight of pesticide distribution, sale, and use. SB 173 will ensure that Alaska's public utilities will not incur significant regulatory expenses from the legal use of federally regulated pesticides on wood utility poles. It aligns state law with federal statutes so that the Alaska electric utilities may follow best management practices consistent with what other utilities follow across the nation. This legislation benefits Alaskan consumers who would eventually have to pay for remediation and removal through their utility bills.

MS. ENKVIST noted that Sylvia Mitchell, President and CEO, Inside Passage Electric Co-operative, was planning on testifying today in person in support of SB 173, but she became ill.

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DON MCNAMARA, Oceanside Farm, Homer, Alaska, did not favor using any pesticide or herbicide and did not support SB 173. "Just because you've been polluting forever doesn't mean you have to keep on polluting forever, he said." He suggested using concrete poles and said wire should be underground whenever possible, because it won't blow over in a storm, a tree won't fall on it, and maintenance will be a lot less. Existing poles should be grandfathered in and new poles should be outlawed.

DONNA RAE FAULKNER, Oceanside Farm, Homer, Alaska, repeated that they use organic methods and whenever the issue of pesticides comes up they are concerned. As a ratepayer, she appreciates Senator Micciche trying to protect them financially. She has concerns about what specific costs and damages are possible if ground water is contaminated and would be happy, as a rate payer, to support mitigating that situation. Protecting the environment and public health is really important.

[4:42:48 PM](#)

ROBERT HIMSCHOOT, Nushagak Electric and Telephone Co-operative, Dillingham, Alaska, supported SB 173. The co-operative provides electric and telephone service to Dillingham and Alignagik and have about 1450 meters in the system. The current statute creates an unintended liability.

The advantages of wood poles have been well spelled out in today's testimony. Nushagak has about 1500 wood poles in service. At \$30,000 per pole, it would cost a total of \$45 million to retire and mitigate them. Part of the problem then becomes how to distribute that cost to the members. When a line is put in service the cost is depreciated so that all ratepayers uniformly pay for it. So, that sort of liability would apply to only present and future ratepayers. There are attachment fees from telecommunication providers, too. The depreciated amount of the poles is used to come up with a fair use access fee and they would be adversely affected, too.

[4:46:08 PM](#)

EDDIE TAUNTON, Director of Operations, MatSu Electric Association (MEA), Inc., Palmer, Alaska, supported SB 173. He said MatSu Electric is a co-operative that serves almost 65,000 meters and 51,000 members from Eagle River to Trapper Creek and

over to the Matanuska Glacier. MEA has over 4300 miles of line of which 2100 are overhead. They bring power to each member and a majority of those lines are held up by an estimated 45,000 wood power poles. These poles are essential to serve the needs of their members and drive commerce in their region. He listed some of the benefits electricity brings to a household. To do this safely and economically it is imperative that Alaska utilities are allowed to use treated poles to ensure the structural integrity of their equipment. He said: "We believe the use of the EPA-approved wood preservative pentachlorophenol is essential and responsible."

MR. TAUNTON said environmental studies have shown that properly treated poles are expected to have minimal pesticide migration from the pole to the environment directly surrounding the pole. Their members should not face an unfair burden. The co-operative should be held to the same standards as federal law and that of other states including California, Oregon, and Washington.

[4:48:35 PM](#)

CHAIR GIESSEL thanked Mr. Taunton. Finding no further testimony, she closed it and noted that the additional information from SPAR Director Ryan and Mr. Brooks would be forthcoming.

SENATOR STEDMAN stated that the legislature should take up the subject of cost containment for processing contaminated materials because it is ridiculous to ship something from Homer to eastern Washington for disposal.

CHAIR GIESSEL held SB 173 in committee.

[4:51:12 PM](#)

CHAIR GIESSEL adjourned the Senate Resources Standing Committee meeting at 4:51 p.m.