

HB

149

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

BILL SHEFFIELD, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

March 23, 1987

Honorable Adelheid Herrmann
Alaska House of Representatives
P. O. Box V
Juneau, AK 99811

Dear Representative Herrmann:

Re: House Bill 149 Insurance for Oil Terminals

This is in response to the inquiry of your aide, Rena, of March 20.

At the present time the Division of Insurance is talking with a Lloyds of London broker to explore the following options.

How much would it cost to the fuel deliverer to buy a wharfman's policy that would insure his activity in fueling up an on-land storage unit. By transferring this liability to the fuel deliverer, it would lessen the liability of the utility. Presently a typical Lloyds policy excludes this activity for the fuel deliverer. The Lloyds of London broker is presently exploring the possibility of how much it would cost to take out this exclusion and make it a part of the policy.

The second option the Lloyds of London broker is exploring is how much would it cost to have the same policy that is in force right now for those fuel tanks in Ushigak and Naknek on Lloyds of London paper. I should know by Wednesday, March 25.

The broker is also evaluating the cost impact of a wharfsman's policy on a policy presently in force.

Sincerely,



Christian Ulmann
Insurance Market Analyst
Commercial Lines

CU/v10787V
032387b

NUSHAGAK ELECTRIC COOPERATIVE, INC.
P. O. Box 350
Dillingham, Alaska 99576
Phone: 842-5251

My name is Jeri Nelson. I'm office manager for Nushagak Electric Cooperative, Inc. in Dillingham, Alaska. I'm here to speak in support of HB 149, exempting electric cooperatives operating oil terminal facilities from compliance with Alaska Statute 46.04.040.

Dillingham exists because of the resident herring and salmon commercial fisheries. Many of our Co-op members are directly involved in these fisheries as commercial fisherman. Most others are involved in municipal, state or federal service programs that have evolved because this resident commercial fishery exists.

Of the seven elected members of our Board of Directors, only three are not directly involved in the fisheries as commercial fishermen.

My husband and I came to Dillingham 25 years ago so he could accept employment as Area Management Biologist for the Alaska Dept. of Fish & Game in Bristol Bay. Every resident in Dillingham is there, in one way or another, because of the fisheries.

I tell you these things so you will recognize that the cleanliness of our natural environment and the waters of Bristol Bay is of vital importance to every member of our Cooperative. Habitat protection is the number one priority in maintaining the fisheries resources.

As you know, Alaska Statute 46.04.040 requires cooperatives operating fuel storage tanks in excess of 10,000 barrels (420,000 gallons) to submit proof of financial responsibility for oil spill clean-up in the amount \$1,000,000 in order to store or off-load fuel.

Nushagak Electric Cooperative, Inc., falls under the provisions of this statute because of action we took in 1985 to gain some relief from the sky-rocketing cost of fuel being supplied to us by CHEVRON, the local distributor. At that time, using State grant monies, we constructed two 500,000 gallon fuel storage tanks on utility property adjacent to our powerhouse.

To briefly comment on that construction and our bulk facilities, the tanks are located in a diked enclosure with 5 ft. steel retaining walls. In conjunction with the tank construction, a 6 inch pipeline was buried at depths of 3 to 8 feet connecting the tank farm to the City Dock, located some 3600 feet away, where a 6 inch check valve and gate valve are installed on the terminating header.

The pipe itself is a combination of Schedule 40 and Schedule 80 steel pipe. All connections were welded by a certified pipeline welder and Schedule 80 pipe was used under all street crossings and under the Dock loading zone area for added strength. When completed, the entire pipeline was pressure tested at 250 pounds per square inch. This pressure held for about 6 weeks, at which time the pressure was manually released.

There are two one-way check valves located in the 6 inch line before it enters the diked enclosure and one one-way check valve in the enclosure itself. In addition, there are three 6 inch outside screw and yoke gate valves in the line and one at each tank. Our facilities were carefully engineered and inspected and are really "first class."

Regarding the measures we have taken to protect the environment and to deal with any problem that might arise, in 1985, NEC completed a Coast Guard approved OIL TRANSFER OPERATIONS MANUAL and a DEC required OIL SPILL CONTINGENCY PLAN. Our General Manager and powerhouse personnel have been trained in implementation of these documents as required by the U. S. Coast Guard and DEC. In addition, the Cooperative has entered into contracts for potential clean-up services with ALASKA OFFSHORE INC. and CROWLEY ENVIRONMENTAL SERVICES.

Since the tank and pipeline project was completed in the fall of 1985, the Cooperative has received two fuel deliveries averaging approximately 900,000 gallons each. During each delivery, a U.S. Coast Guard representative was present and no spills or any other adverse environmental incidents occurred.

During fuel transfer operations, which normally take place over a 34 hour period each year, trained utility personnel are present both at the dock where the actual off-loading takes place and at our tank farm, some 3600 feet distant. They are in radio contact at all times. In addition, the fuel barge always has a least one man, and usually more than one, present at all times during the loading process. A Coast Guard representative oversees the entire operation.

Considering our previously stated concerns about the health of the environment, why are we asking for relief from compliance with this statute which only requires assurance of financial responsibility for oil-spill clean-up?

WE MUST HAVE THE FUEL. But, in order to off-load our fuel, it is possible that we will, in the future, be forced to violate Alaska Statute 46.04.040 as it is written, a problem shared with utilities in Naknek, Kotzebue and Nome.

1. In 1985, we were able, at the last minute, to secure spill insurance coverage through the ALASKA RURAL ELECTRIC COOPERATIVE'S INSURANCE EXCHANGE for the first \$500,000 and a letter of credit from the NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION for the remaining \$500,000.
2. In 1986, ARECA couldn't secure this liability coverage. With the help of our attorney and the State of Alaska, we were able, again at the last minute, to find a commercial market for a \$1,000,000 limit oil spill insurance policy at a premium cost to our Co-op of \$10,400.
3. Our broker has warned us that in the future, it is likely that it will be impossible to secure this type of insurance at any cost, the trend in the insurance market being to exclude losses related to environmental exposures.

For our own protection, we would, of course, purchase such insurance if it were available, even though the premium seems somewhat excessive for approximately 34 hours of exposure each year.

If this coverage is not available, however, we would have no choice but to off-load in violation of statute or to abandon our tank farm facilities and purchase fuel through the local distributor at a per gallon cost 15-20 cents higher than the low-cost product we have been able to barge into Dillingham for the past two years. Of course, this higher priced fuel would significantly raise the PCE credit available to our customers which would, in turn, result in a substantial additional and unnecessary drain on the State's limited financial resources -- to the tune of approximately \$6,000 per month, a 12.5 % increase (using December figures under existing program guidelines).

NEC currently holds over \$1,000,000 equity in its system, an amount that exceeds the \$1,000,000 assurance required by Statute. NEC has taken all preventative measures suggested or requested by DEC, the U.S. Coast Guard and common sense, as outlined previously. In the unlikely event that a spill should occur, NEC's members and directors would expect and demand that their Cooperative do everything within its resources to clean-up the environment.

One of two things must happen in order for NEC to continue to legally procure and off-load fuel at competitive prices: (1) We must be relieved from compliance with AS 46.04.040 in order to make necessary commitments for purchase and delivery at a time when availability of insurance is uncertain, or (2) We must be assured that adequate oil spill liability insurance is available to us in a timely manner each and every year.

Unfortunately, the State does not control the insurance markets; consequently, we seek your support of HB 149, exempting electric cooperatives operating as oil terminal facilities from compliance with AS 46.06.040.

Thank you.



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

January 15, 1986

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Herrmann:

Last November, Claude Franke and Dave Bouker wrote you about a problem they were having -- and expecting to get worse -- caused by a statutory requirement that they buy strict liability insurance for oil spills. Both NEC and NEA have increased their fuel storage capacity in recent years in order to buy competitively priced oil and store it themselves. It was increasing their tank capacity above 10,000 barrels that makes this statute apply to them.

For 1985 we went through great difficulty to find a way to help these two small coops comply with the law. Their regular policy for general liability insurance issued by the ARECA Insurance Exchange provided \$500,000 of oil spill insurance. There was no other oil spill liability insurance available for them to buy at any price.

To get the additional \$500,000 in coverage for them, what we had to do was to get them to indemnify the Exchange and post an irrevocable letter of credit payable to the Exchange to cover costs of oil spills between \$500,000 and \$1 million, and the Exchange then issued the insurance policy. This insurance policy met the DEC requirements, but the coops were fully responsible for any losses exceeding \$500,000 which might have occurred. This arrangement cost them the fee for the letter of credit and the expenses incurred by the Exchange for setting it up. Much more importantly, this approach tied up a major part of their credit capacity which then could not be used for normal business requirements.

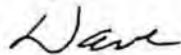
For 1986, even the ARECA Insurance Exchange is completely unable to provide oil spill insurance because it is not possible for us to buy reinsurance covering oil spills. This means that the only way for NEC and NEA to comply with the law is go through the cumbersome and expensive process of retaining the

entire risk of the \$1 million policy limit, and have the Exchange issue the \$1 million policy. But this would use nearly their entire line of credit! They might not even be able to borrow the money to buy the fuel which they would have sole responsibility to clean up if they spilled some of it.

This is an absurd situation which requires a legislative solution this session. Claude and Dave sent you a draft providing an easy way of resolving the problem. Our idea is that a certificate of public convenience and necessity for a utility should be proof in itself of financial responsibility. A utility isn't going anywhere. If a spill occurs, they will still be there and have the financial ability to pay for the clean up.

After consulting with the attorney who drafted it, I have slightly reorganized the proposed statutory amendment. We hope you will introduce a bill to resolve the problem being experienced by NEC and NEA and push it through to passage.

Sincerely,



David Hutchens
Executive Director

DH/CF

cc: Claude Franke, NEA
Dave Bouker, NEC

cc: KEN JOHNSON

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

BILL SHEFFIELD, GOVERNOR

Telephone: (907) 465-2653

Address: Box 0

Juneau, Alaska 99811

January 27, 1986

JAN 29 1986

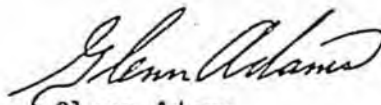
Mr. Dave Hutchens
ARECA Insurance Exchange
237 East Fireweed Lane, Suite 301
Anchorage, AK 99503

Dear Dave:

During your phone call last week to myself and Paul O'Brien, Manager of the Oil Pollution Program, problems of obtaining adequate insurance coverage for oil pollution damages were discussed. Paul agreed that I would review our files and send you the names of insurance underwriters that have current policies in force. I reviewed the files and came up with four underwriters and information on what other fuel handling companies are doing (enclosed); I am also sending a copy of the report from the Task Force on Insurance Availability and Pricing.

The Department of Commerce and Economic Development, Division of Insurance said they can provide "special market assistance" to the broker, their address is on the Task Force report. We will continue to work with the industry in every way that we can.

Sincerely,



Glenn Adams
Oil Pollution Control
Division of Environmental Quality

cc: Keith Kelton, Director
Bill Ross, Commissioner
Representative Adelheid Herrmann
Representative Rich Yehling
Senator Fred F. Zharoff

January 23, 1986

INSURANCE INFORMATION FOR FUEL STORAGE FACILITIES

The following information is taken from current files that require proof of financial responsibility for oil pollution for "fuel storage facilities." This information is not an endorsement or recommendation but is provided in an attempt to help locate insurance coverage that will comply with Sec. 46.04.040(e) and 18 AAC 20.065.

Insurance underwriters and brokers that have currently active policies:

1. Lloyd's London and various companies
Broker - Pacific International Brokers, Ltd.
2. Employers Mutual Casualty Company
Broker - Mutual Marine Office, Inc.
3. National Union Fire Insurance Company of Pittsburgh, Pa.
Broker - Alaska 100 Insurance
4. Midlands Insurance Company, Inc.
by West Coast Marine Managers, Inc.
Broker - Nasman and Associates, Inc.

The 34 files (representing 67 facilities) are broken down to show how many are using other means of providing proof of financial responsibility.

Surety Bonds	4
Guaranty	3
*Self-Insurance	12
Government	3
Insurance	8
Other	7

* Some use this means to cover deductible or financial records requirements for guaranty.

Of the eight showing insurance as their preference, five have policies that expired this December and January and are trying to renew their policies. There are seven new owners/operators that have not returned their application forms or shown what means of proof they intend to use.

Glenn Adams
Oil Pollution Control



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

February 21, 1986

Representative Mike Davis, Chairman
House Special Committee on Oil & Gas
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mike:

As I indicated in our brief conversation yesterday afternoon, we would really like to get HB 628 moving and hope you will schedule it at the earliest opportunity. This letter is in response to a request from Jonathan for additional information.

Enclosed is a copy of my letter to Representative Herrmann asking that this kind of legislation be introduced. It gives the background to the problem, specifically for Naknek Electric and Nushagak Electric. Both are cooperatives and members of our organization.

Also enclosed is a copy of correspondence from Glen Adams, of the Department of Environmental Conservation, suggesting some other places to look for means of complying with the statute. When I received the letter from Glen, I gave a copy to our insurance consultant and broker, Corroon & Black, Dawson and Company. After they checked out each suggestion, Joe Piccione wrote me a letter detailing their findings. A copy of this letter is enclosed. It indicates conclusively that in today's insurance market, compliance is simply impossible.

Jonathan also asked which utilities have this problem, what are their tank capacities, and how often do they fill their tanks.

At present, Nushagak Electric and Naknek Electric are the only utilities which have had dealings with DEC on this issue. Kotzebue Electric also has new tank capacity sufficient to bring them into the same problem, but DEC has not yet made an issue of it with them. Nome Joint Utilities, a municipal utility, is negotiating to lease tank space to use in 1986. If their negotiations are successful, they will have sufficient capacity to face the same problem. (I hope that my responding fully to Jonathan's questions will not cause problems for Kotzebue or Nome.)

DEMOCRACY IN ACTION

Representative Mike Davis
February 21, 1986
Page 2 of 2

The tank capacities for these four utilities will vary from approximately 20,000 to 35,000 barrels. They typically fill their tanks only once a year. That is why they need so much tank capacity in these ice-bound communities.

We understand that DEC has offered to "look the other way," but even a non-willful violation of this statute is a Class B Misdemeanor. Each day of non-compliance is a separate violation. This is a serious business that simply must be resolved legislatively.

Thank you for your interest. If you have additional information, please let me know.

Sincerely,



Dave Hutchens
Executive Director

Enclosures

DH:ph

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907)

Address:

OFFICE OF THE COMMISSIONER
P. O. BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

March 25, 1986

The Honorable Mike Davis
Alaska State House
P. O. Box V
Juneau, AK 99811-3100

Dear Representative Davis:

During the last several weeks, the Department has testified before the Oil and Gas Subcommittee on HB 628 and has worked with your office and staff from Representative Herrmann's office in addressing the difficulties faced by electric cooperatives in meeting the Department's oil pollution financial responsibility requirements. We have also been working closely with the Division of Insurance and representatives from the rural electric cooperatives in this matter. Based upon numerous discussions with legislative staff, the Division of Insurance, and a representative of the electric cooperatives, I believe that we have identified ways to resolve these issues.

Such a resolution is largely dependent upon the Department addressing two items: 1) amending our financial responsibility regulations to accept claims made insurance policies, and 2) clarifying the types of damages that are covered under the financial responsibility requirements. This letter is intended to show the steps I am preparing to take to satisfy these concerns, thereby enabling the cooperatives to meet the Department's financial responsibility requirements in a cost effective manner.

First, I am prepared to amend the Department's financial responsibility regulations to add claims made insurance policies as an option for oil facility operators such as the electric cooperatives. We have worked closely with the Division of Insurance on this change and have already drafted language to this effect. At the same time that we reevaluate our insurance requirements, we will be looking at the other options available for demonstrating proof of financial responsibility to determine if any other revisions to the regulations are necessary.

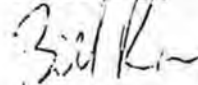
March 25, 1986

With regard to the second issue requesting clarification of the types of damages covered under the financial responsibility requirements, my staff has been in contact with the Attorney General's office on this matter. We have been assured that the Department's financial responsibility regulations apply to the operator's liability to others, i.e. third parties. Therefore, insurance policies should be available for this type of coverage. There has also been concern expressed by the cooperatives that insurance is not available to cover the civil damages and penalties referenced under the financial responsibility statutes. This position is predicated on the assumption that insurance will not pay for penalties of a punitive nature. However, the civil penalty and damage statutes referenced under AS 46.04.040 are not punitive. In fact, they are used for compensatory and remedial purposes associated with liquidated damages to the State. It is my understanding that insurance is available to cover these types of damages.

We have made substantial progress in identifying the issues and we have worked to resolve the financial responsibility problem that has been brought before the Legislature by the electric cooperatives. I believe that the action I have outlined above will solve the difficulty in obtaining insurance.

It should also serve to provide more flexibility in the regulations and make it easier for facility operators to satisfy the Department's financial responsibility requirements.

Sincerely,



Bill Ross
Commissioner

cc: Representative Adelheid Herrmann
Representative John Sund
Christian Ulmann, Division of Insurance
Dave Hutchins, ARECA Insurance Exchange

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

DIVISION OF INSURANCE

April 24, 1986

Honorable Mike Davis
Alaska State House
House Special Committee
on Oil and Gas
P.O. Box V
Juneau, AK 99811-3100

Dear Representative Davis:

Re: HB 628. Oil pollution insurance availability
for electric cooperatives

After receipt of Commissioner Bill Ross's letter of March 25, 1986, which clarified the types of damages covered under the financial responsibility requirements, we were in a position to identify potential markets and have shared that information with the Alaska Rural Electric Cooperative Association (ARECA). Additionally, we contacted several underwriters in an attempt to generate interest in ARECA.

We found several possible options which are, at the present time, being checked out by ARECA's insurance broker:

The International Surplus Lines Insurance Company is the only writer of monoline pollution liability insurance at a reasonable rate. It appears that the electric utilities have a good chance to obtain insurance through this outfit.

The Pollution Liability Insurance Association (PLIA) is a reciprocal pool that arranges reinsurance for its member companies covering pollution liability. Alaska Statutes 21.75.020 and 21.39.110 do not prohibit ARECA from joining such an arrangement. ARECA might wish to check out the requirements for becoming a member. Since ARECA is not a member of PLIA, PLIA will write pollution liability in connection with the general liability only if the whole risk has been submitted by a member company. For ARECA, that means that they might have to split the accounts where pollution liability is required.

Honorable Mike Davis

-2-

April 24, 1986

Further, we found other insurance companies that would write under the conditions outlined by Commissioner Bill Ross of the Department of Environmental Conservation. However, they did not seem to be very cost efficient. We also made recommendations on how to limit the liability exposures and, consequently, obtain a better rate.

We will continue to touch base with the insurance companies and ARECA and try to improve communications.

If you want or need more discussion, I will be happy to expand on this letter.

Very truly yours,



Christian Ulmann
Insurance Market Analyst
Commercial Lines

CU/ss0242Z

042486a

cc: Representative Adelheid Herrmann
Representative John Sund
Commissioner Bill Ross, Department of Environmental Conservation
Dave Hutchens, ARECA Insurance Exchange

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907)
Address:

POSITION PAPER

Bill No. HB 149

Date: March 20, 1987

Title: An Act relating to certain oil
terminal operators.

Contact: Randy Bayliss
465-2600

Department's Position

We do not support the bill. Insurance and other means of providing proof of responsibility requirements are available to electric cooperatives for satisfying the department's requirements under AS 46.04.

Effect of the Bill

HB 149 amends the department's oil pollution statutes (AS 46.04) to exempt all electric cooperatives that operate an oil terminal facility with a storage capacity of 10,000 barrels or more from demonstrating proof of financial responsibility to the department. Under AS 46.04.040, all operators of offshore oil exploration and production facilities, tank vessels, oil barges, and oil terminal facilities with a storage capacity of 10,000 barrels or more must show to the department that they are financially capable of compensating for damages that might result from oil spills at their facilities. The amount of financial responsibility required under AS 46.04 for oil terminals, such as those operated by electric cooperatives, is \$10 per barrel of storage capacity or \$1 million, whichever is greater. Financial responsibility may be demonstrated by self-insurance, guaranty, insurance, or surety bond.

Impact on the Agency

HB 149 will have no fiscal impact on the department.


Dennis D. Kelso
Commissioner



NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99633 • PHONE (907) 246-4261

November 1, 1985

Rep. Adelheid Herrmann
P.O. Box 63
Naknek, AK 99633

Sen. Fred Zharoff
P.O. Box 405
Kodiak, AK 99615

RE: STATUATE COMPLIANCE TO FINANCIAL RESPONSIBILITY

Your Honors Herrmann & Zharoff:

This past and previous year extreme problem has arisen with this Association, Naknek Electric Association, (N.E.A.) and our neighboring cooperative, Nushagak Electric Cooperative, (N.E.C.) and the Alaska Department of Environmental Conservation. (D.E.C.)

Compliance satisfaction with the Department to Section 1 as 46.04.040 (e) "Financial Responsibility" as formed in the law provides a very constraining element for a small rural utility to provide \$1,000,000 in financial responsibility, or bonding, or assurity.

We are put into this situation due to our geographic and economic location. With the requirements of providing economic and reliable electric service to our given service areas, we must have fuel; our fuel requirement constitutes near 50% of our production costs.

In an effort to reduce our costs, large volume storage vessels have been constructed by our respective utilities to facilitate bulk fuel procurement by joint bidding. One time a year we have delivery in our ice bound ports providing a year round supply along with reducing the exposure of handling fuel several times a year outside of our property.

The net result has brought down fuel costs per gallon to .8714 for this years fuel. This saving reduced the delivered kilowatt hour by .02¼¢ for each delivered kilowatt hour to the consumer. Likewise the first 750 kilowatt hours cap for Power Cost Equalization (PCE) has realized the same reduction of .02¼¢, saving the PCE fund \$168,885 for the two cooperatives. This saving is for the State of Alaska by prudent action of the cooperatives.

PAGE TWO
HERRMANN & ZHAROFF
November 1, 1985

Now then, the D.E.C. comes forth with unbending rules, regulations, and law forcing expenditures for premium of unobtainable insurance and or surity bonding, irrevocable line of credit or proof of financial responsibility; of course, the last being the most desirable but hereto unobtainable. If we do not have one of the previous required surities we are outside of the law and subject to severe penalty as well as being unable to obtain the necessary permit to off load fuel.

This year, after spending nearly 10 months searching the insurance market, (even from firms suggested by D.E.C., which incidentally flatly denied or did not respond to our broker) we were able to provide D.E.C. with unconventional one time surity for this years fuel off loading at our facilities. We have been put on notice that the same coverage will not be available next year. We, too, anticipate conventional underwriting will not be available nor will we be able to prove to satisfaction our financial responsibility to the unbending D.E.C.

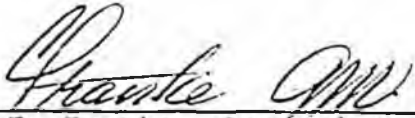
The law as written seems to be directed to non-permanent principals in the business of transporting fuel rather than permanent facilities such as ours. (N.E.A. and N.E.C.) These two cooperatives have taken due and concerned steps to build the best fuel and service systems we could with total attention to safety and integrity.


We and all utilities have every intention of continued existence with address to our responsibilities. What we are saying is, if we have a spill, we most certainly will clean it up without the constraints of the law imposing financial burden upon us, and more important yet, all of our consumers are members of the community, and our members derive their livelihood from the sensitive fishery environment and will see to it that we clean up any spill which may occur.

With all this discourse, hopefully, the stage is set to request your legislative efforts to amend Section 1 & 2 of AS. 46.04.040 (e) to read as attached.

If you have questions with our request for legislation, please feel free to contact us.

Sincerely,


C.E. Franke, General Manager
Naknek Electric Assoc., Inc.


Dave Bouker, General Manager
Nushagak Electric Cooperative

CEF/sp

cc: Dave Hutchens, Executive Director, A.R.E.C.A.
Roger Kempel, N.E.A. & N.E.C., counsel
KEMPPPEL, HUFFMAN, & GINDER

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, possession of a certification of public convenience and necessity issued under AS 42.05, or guarantee, under terms the department may prescribe. An action under AS 45.03.73a, 45.03.73b, or 45.03.73c may be brought in AS 18.01.022 directly against the insurer or other person providing evidence of financial responsibility. The applicant, and an insurer, surety, or guarantee shall appoint an agent for service of process in the state. An insurer must either be authorized by the Department of Commerce and Economic Development to sell insurance in the state or be an unauthorized insurer listed by the Department of Commerce and Economic Development as not disapproved for use in the state.

* Section 2. This Act takes effect immediately in accordance with AS 01.10.070 (c).



ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

January 15, 1986

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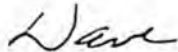
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entire risk of the \$1 million policy limit, and have the Exchange issue the \$1 million policy. But this would use nearly their entire line of credit! They might not even be able to borrow the money to buy the fuel which they would have sole responsibility to clean up if they spilled some of it.

This is an absurd situation which requires a legislative solution this session. Claude and Dave sent you a draft providing an easy way of resolving the problem. Our idea is that a certificate of public convenience and necessity for a utility should be proof in itself of financial responsibility. A utility isn't going anywhere. If a spill occurs, they will still be there and have the financial ability to pay for the clean up.

After consulting with the attorney who drafted it, I have slightly reorganized the proposed statutory amendment. We hope you will introduce a bill to resolve the problem being experienced by NEC and NEA and push it through to passage.

Sincerely,



David Hutchens
Executive Director

DH/CF

cc: Claude Franke, NEA
Dave Bouker, NEC

cc: Ken Johnson

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907) 465-2653

Address: Box 0

Juneau, Alaska 99811

January 27, 1986

JAN 29 1986

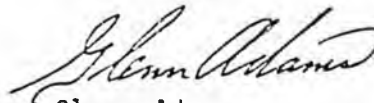
Mr. Dave Hutchens
ARECA Insurance Exchange
237 East Fireweed Lane, Suite 301
Anchorage, AK 99503

Dear Dave:

During your phone call last week to myself and Paul O'Brien, Manager of the Oil Pollution Program, problems of obtaining adequate insurance coverage for oil pollution damages were discussed. Paul agreed that I would review our files and send you the names of insurance underwriters that have current policies in force. I reviewed the files and came up with four underwriters and information on what other fuel handling companies are doing (enclosed); I am also sending a copy of the report from the Task Force on Insurance Availability and Pricing.

The Department of Commerce and Economic Development, Division of Insurance said they can provide "special market assistance" to the broker, their address is on the Task Force report. We will continue to work with the industry in every way that we can.

Sincerely,



Glenn Adams
Oil Pollution Control
Division of Environmental Quality

cc: Keith Kelton, Director
Bill Ross, Commissioner
Representative Adelheid Herrmann
Representative Rich Yehling
Senator Fred F. Zharoff

January 23, 1986

INSURANCE INFORMATION FOR FUEL STORAGE FACILITIES

The following information is taken from current files that require proof of financial responsibility for oil pollution for "fuel storage facilities." This information is not an endorsement or recommendation but is provided in an attempt to help locate insurance coverage that will comply with Sec. 46.04.040(e) and 18 AAC 20.065.

Insurance underwriters and brokers that have currently active policies:

1. Lloyd's London and various companies
Broker - Pacific International Brokers, Ltd.
2. Employers Mutual Casualty Company
Broker - Mutual Marine Office, Inc.
3. National Union Fire Insurance Company of Pittsburgh, Pa.
Broker - Alaska 100 Insurance
4. Midlands Insurance Company, Inc.
by West Coast Marine Managers, Inc.
Broker - Nasman and Associates, Inc.

The 34 files (representing 67 facilities) are broken down to show how many are using other means of providing proof of financial responsibility.

Surety Bonds	4
Guaranty	3
*Self-Insurance	12
Government	3
Insurance	8
Other	7

* Some use this means to cover deductible or financial records requirements for guaranty.

Of the eight showing insurance as their preference, five have policies that expired this December and January and are trying to renew their policies. There are seven new owners/operators that have not returned their application forms or shown what means of proof they intend to use.

Glenn Adams
Oil Pollution Control



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

February 21, 1986

Representative Mike Davis, Chairman
House Special Committee on Oil & Gas
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mike:

As I indicated in our brief conversation yesterday afternoon, we would really like to get HB 628 moving and hope you will schedule it at the earliest opportunity. This letter is in response to a request from Jonathan for additional information.

Enclosed is a copy of my letter to Representative Herrmann asking that this kind of legislation be introduced. It gives the background to the problem, specifically for Naknek Electric and Nushagak Electric. Both are cooperatives and members of our organization.

Also enclosed is a copy of correspondence from Glen Adams, of the Department of Environmental Conservation, suggesting some other places to look for means of complying with the statute. When I received the letter from Glen, I gave a copy to our insurance consultant and broker, Corroon & Black, Dawson and Company. After they checked out each suggestion, Joe Piccione wrote me a letter detailing their findings. A copy of this letter is enclosed. It indicates conclusively that in today's insurance market, compliance is simply impossible.

Jonathan also asked which utilities have this problem, what are their tank capacities, and how often do they fill their tanks.

At present, Nushagak Electric and Naknek Electric are the only utilities which have had dealings with DEC on this issue. Kotzebue Electric also has new tank capacity sufficient to bring them into the same problem, but DEC has not yet made an issue of it with them. Nome Joint Utilities, a municipal utility, is negotiating to lease tank space to use in 1986. If their negotiations are successful, they will have sufficient capacity to face the same problem. (I hope that my responding fully to Jonathan's questions will not cause problems for Kotzebue or Nome.)

Representative Mike Davis
February 21, 1986
Page 2 of 2

The tank capacities for these four utilities will vary from approximately 20,000 to 35,000 barrels. They typically fill their tanks only once a year. That is why they need so much tank capacity in these ice-bound communities.

We understand that DEC has offered to "look the other way," but even a non-willful violation of this statute is a Class B Misdemeanor. Each day of non-compliance is a separate violation. This is a serious business that simply must be resolved legislatively.

Thank you for your interest. If you have additional information, please let me know.

Sincerely,



Dave Hutchens
Executive Director

Enclosures

DH:ph

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907)

Address:

OFFICE OF THE COMMISSIONER
P. O. BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

March 25, 1986

The Honorable Mike Davis
Alaska State House
P. O. Box V
Juneau, AK 99811-3100

Dear Representative Davis:

During the last several weeks, the Department has testified before the Oil and Gas Subcommittee on HB 628 and has worked with your office and staff from Representative Herrmann's office in addressing the difficulties faced by electric cooperatives in meeting the Department's oil pollution financial responsibility requirements. We have also been working closely with the Division of Insurance and representatives from the rural electric cooperatives in this matter. Based upon numerous discussions with legislative staff, the Division of Insurance, and a representative of the electric cooperatives, I believe that we have identified ways to resolve these issues.

Such a resolution is largely dependent upon the Department addressing two items: 1) amending our financial responsibility regulations to accept claims made insurance policies, and 2) clarifying the types of damages that are covered under the financial responsibility requirements. This letter is intended to show the steps I am preparing to take to satisfy these concerns, thereby enabling the cooperatives to meet the Department's financial responsibility requirements in a cost effective manner.

First, I am prepared to amend the Department's financial responsibility regulations to add claims made insurance policies as an option for oil facility operators such as the electric cooperatives. We have worked closely with the Division of Insurance on this change and have already drafted language to this effect. At the same time that we reevaluate our insurance requirements, we will be looking at the other options available for demonstrating proof of financial responsibility to determine if any other revisions to the regulations are necessary.

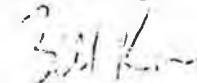
March 25, 1986

With regard to the second issue requesting clarification of the types of damages covered under the financial responsibility requirements, my staff has been in contact with the Attorney General's office on this matter. We have been assured that the Department's financial responsibility regulations apply to the operator's liability to others, i.e. third parties. Therefore, insurance policies should be available for this type of coverage. There has also been concern expressed by the cooperatives that insurance is not available to cover the civil damages and penalties referenced under the financial responsibility statutes. This position is predicated on the assumption that insurance will not pay for penalties of a punitive nature. However, the civil penalty and damage statutes referenced under AS 46.04.040 are not punitive. In fact, they are used for compensatory and remedial purposes associated with liquidated damages to the State. It is my understanding that insurance is available to cover these types of damages.

We have made substantial progress in identifying the issues and we have worked to resolve the financial responsibility problem that has been brought before the Legislature by the electric cooperatives. I believe that the action I have outlined above will solve the difficulty in obtaining insurance.

It should also serve to provide more flexibility in the regulations and make it easier for facility operators to satisfy the Department's financial responsibility requirements.

Sincerely,



Bill Ross
Commissioner

cc: Representative Adelheid Herrmann
Representative John Sund
Christian Ulmann, Division of Insurance
Dave Hutchins, ARECA Insurance Exchange

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

April 2, 1986

Commissioner Bill Ross
Department of Environmental Conservation
P.O. Box 0
Juneau, Alaska 99811-1800

Dear Commissioner Ross,

The House Special Committee on Oil and Gas recently held a hearing on HB 628 and, subsequent to this hearing, conducted several work sessions on the topic of the availability of oil pollution insurance to electric cooperatives. Members of your department, Rep. Herrmann's staff, the Division of Insurance, the Alaska Rural Electric Cooperative Association, and my office identified regulatory measures that could be taken to allow electric cooperatives to meet oil pollution financial responsibility requirements.

Your letter of March 25 acknowledged that the department would be willing to make appropriate regulatory changes as an alternative to the passage of HB 628. It is also my understanding that the department is willing to take the following actions in this regard:

1. Amend 18 AAC 20.065 to allow for the submission of policies issued on a "claims made" basis in addition of "occurrence" policy forms.
2. Secure an Attorney General's opinion clarifying that the financial responsibility requirements apply only to third-party liabilities and not to damages to their own premises or to penalties or punitive damages, and supply that opinion to the electric cooperatives and their insurers.
3. As appropriate, either adopt regulatory changes through the emergency regulatory procedure or enter into an emergency compliance order with the affected utilities.

Thank you for your assistance and responsiveness in attempting to resolve this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mike".

Rep. Mike Davis, Chairman
House Special Committee on Oil and Gas

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2515

DIVISION OF INSURANCE

April 24, 1986

Honorable Mike Davis
Alaska State House
House Special Committee
on Oil and Gas
P.O. Box V
Juneau, AK 99811-3100

Dear Representative Davis:

Re: HB 628. Oil pollution insurance availability
for electric cooperatives

After receipt of Commissioner Bill Ross's letter of March 25, 1986, which clarified the types of damages covered under the financial responsibility requirements, we were in a position to identify potential markets and have shared that information with the Alaska Rural Electric Cooperative Association (ARECA). Additionally, we contacted several underwriters in an attempt to generate interest in ARECA.

We found several possible options which are, at the present time, being checked out by ARECA's insurance broker:

The International Surplus Lines Insurance Company is the only writer of monoline pollution liability insurance at a reasonable rate. It appears that the electric utilities have a good chance to obtain insurance through this outfit.

The Pollution Liability Insurance Association (PLIA) is a reciprocal pool that arranges reinsurance for its member companies covering pollution liability. Alaska Statutes 21.75.020 and 21.39.110 do not prohibit ARECA from joining such an arrangement. ARECA might wish to check out the requirements for becoming a member. Since ARECA is not a member of PLIA, PLIA will write pollution liability in connection with the general liability only if the whole risk has been submitted by a member company. For ARECA, that means that they might have to split the accounts where pollution liability is required.

Honorable Mike Davis

-2-

April 24, 1986

Further, we found other insurance companies that would write under the conditions outlined by Commissioner Bill Ross of the Department of Environmental Conservation. However, they did not seem to be very cost efficient. We also made recommendations on how to limit the liability exposures and, consequently, obtain a better rate.

We will continue to touch base with the insurance companies and ARECA and try to improve communications.

If you want or need more discussion, I will be happy to expand on this letter.

Very truly yours,



Christian Ulmann
Insurance Market Analyst
Commercial Lines

CU/ss0242Z
042486a

cc: Representative Adelheid Herrmann
Representative John Sund
Commissioner Bill Ross, Department of Environmental Conservation
Dave Hutchens, ARECA Insurance Exchange

MEMORANDUM

RECEIVED AUG 25 1986
State of Alaska

TO: Hal Brown
Attorney General
Department of Law

DATE: July 17, 1986

FILE NO:

TELEPHONE NO: 465-2600

FROM: Bill Ross
Commissioner
Department of Environmental
Conservation

SUBJECT: Legal Opinion Re:
Financial Responsibility
Statutes AS 46.04.040

During the 1986 Legislature, legislation was introduced to exempt electric cooperatives from the Department of Environmental Conservation's oil pollution financial responsibility requirements. The filing of this bill was triggered by the difficulties that the cooperatives were experiencing in obtaining oil pollution insurance to meet the financial responsibility requirements of AS 46.04.040. This Department, the Division of Insurance, and the Department of Law worked closely with legislative staff and representatives from the electric coops to identify and resolve the insurance problems.

During hearings and discussions on this legislation, the electric cooperatives, raised concerns that the types of oil spill damages that they believed to be included under the financial responsibility regulations make it difficult to obtain insurance. Insurance representatives for the cooperatives indicated that insurance is not available for damages to the insured's own property or for penalties or damages of a punitive nature. The insurance industry maintains that insurance is only available for oil spill damages caused to third parties.

Consequently, during discussions of the bill, your office advised me that financial responsibility requirements did, in fact, extend only to third party liabilities. We were also informed that the Department's oil spill penalty and damage statutes are clearly not punitive but instead are used for compensatory and remedial purposes. I indicated my understanding of this advise in a March 25 letter to Representative Mike Davis.

As part of my effort to resolve this issue administratively, I agreed to request an Attorney General's opinion confirming the oral advise on the scope of damages that are compensable under our financial responsibility statutes. However, since the legislative session ended, we have found in our files a memorandum of advice dated May 13, 1982 that addressed most of the questions regarding financial responsibility that have been raised by the insurance representatives for the electric coops. Consequently, the only questions that remain to be answered concern the issue of third party liability coverage under the financial responsibility statutes. Specifically, I would appreciate your opinion on the following questions:

- ° What kind of oil spill liability (e.g. third or first party) is incurred by an oil operator demonstrating proof of financial responsibility under AS 46.04.040(i)? In other words, does the law require the operator to provide proof of financial responsibility to cover oil spill damages to the operator's own premises?

Attached are copies of HB 628, my March 25, 1986 letter to Representative Davis, his response of April 2, 1986, and the 1982 memo of advice for your information. If your staff has any questions on this matter, Paul O'Brien, oil spill program manager, can provide additional information. Thank you for your assistance.

Attachments

cc: Doug Mertz

PO/bb



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC

P. O. BOX 350 DILLINGHAM, ALASKA 99576 . AREA CODE (907) 842-5251

January 28, 1987

Senator Fred Zharoff
Representative Adelheid Herrmann

Thank you for giving us the opportunity to share some thoughts with you this date. Unfortunately I have a prior commitment and so will not be able to communicate with you in person but hopefully this short note will be better than nothing.

There are two major issues that are of concern to Nushagak Electric as well as to most of the rest of the rural utilities to some degree.

2. The second issue involves the financial responsibility insurance required for "terminal operators" as outlined in AS 46.04.040. This statute adversely impacts Naknek Electric, Nushagak Electric, the City of Nome and Kotzebue Electric because it requires that "terminal operators" I.E., those entities having over 10,000 barrels of fuel storage to purchase financial responsibility

insurance for the trans-shipment of fuel oil across the dock to the tank farm.

For Naknek Electric and Nushagak Electric, this process takes about 36 hours each and in 1986 we each had to buy insurance costing \$10,400 to comply with the statute. This cost each one of Nushagak Electric consumers about \$10.00 each.

This issue was raised in HB 628 which was sponsored by Herrmann and Adams last year. Unfortunately it did not go anywhere. However the problem is still with us. It seems to me that the statute was originally intended for oil terminals and shippers who may have been characterized as being of a more temporary nature. We, the utilities, are not temporary. We are a permanent part of the community and providing a necessary community service. In doing this, we have complied with all Federal and State regulations relevant to fuel handling. The U.S. Coast Guard oversees our fuel loading process. With all of the precautions taken, I find it difficult to reason why the State Statutes should require these rural communities to provide evidence of financial responsibility when they are least capable of doing so and when the U.S. Government does not require it.

Thank you again for your time and consideration of our concerns. I know I speak for all of the NEC Board of Directors and Membership of the Co-operative when I wish you a productive session this year in Juneau.

Yours very truly,

Adelheid Herrmann

Oil Spill Financial Responsibility Requirements

1. Who must prove financial responsibility for potential oil spills.

AS 46.04.040(a) - Everyone who operates an oil terminal facility.

AS 46.04.120(11) defines oil terminal facility as anyone who transfers, processes, refines or stores oil on or near water.

AS 46.04.050 exempts facilities with less than 10,000 barrels of storage capacity.

2. Liabilities for which financial responsibility must be proved.

18 AAC 20.035 requires proof of financial ability to respond to damage for each pollution incident covered by AS 46.04.040(i)

AS 46.04.040(i) simply refers to the following:

AS 46.03.760(e) - Liability to the state for full amount of direct and indirect cleanup costs.

AS 46.03.822 - Strict liability (without regard to fault) for damages to persons or property (public or private) resulting from an oil spill unless the operator can prove the spill resulted from an act of war, intentional or negligent act of an unrelated third party, negligence by the U.S. Government or State of Alaska, or an Act of God.

AS 46.03.258 - Liability to the state for penalties of:

\$10.00 per gallon of oil in fresh water;

\$2.50 per gallon of oil in an estuary;

\$1.00 per gallon of oil in unconfined saltwater.

Penalties can be multiplied by 5 as punitive damages.

AS 46.03.760(a) - Liability to the state for civil penalties of \$500 to \$100,000 for a violation and \$5,000 per day for each day the violation continues.

3. Amount of financial responsibility which must be proved.

AS 46.04.040(a) requires \$10 per barrel of storage capacity or \$1 million, whichever is greater.

4. How an operator can prove financial responsibility.

18 AAC 20.045 - Possession of Federal Maritime Commission certificate. Not applicable to utilities.

18 AAC 20.055 - Self-insurance. To qualify, an operator must maintain "working capital and net worth" in the amount required in AS 46.04.040(a)-(c)--(\$1 million). In the Statute, AS 46.04.040(a), the term "working capital and net worth" are not used. The Statute speaks of "ability to respond."

18 AAC 20.065 - Insurance. Underwriter must be an admitted carrier or approved by the Division of Insurance. The policy must be written on an occurrence policy form.

18 AAC 20.075 - Surety Bond. The surety must be registered to do business in Alaska, possess a current U.S. certificate and have sufficient underwriting capacity.

18 AAC 20.085 - Guaranty. This permits some other entity to qualify as a self-insurer and then guarantee the operator's financial responsibility.

5. Criminal penalties for violations.

AS 46.03.790

(a) Violation is a Class B misdemeanor.

(b) Wilfull violation is a Class A misdemeanor.

(c) Each day of violation is a separate violation.



NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99633 • PHONE (907) 246-4261

November 1, 1985

Rep. Adelheid Herrmann
P.O. Box 63
Naknek, AK 99633

Sen. Fred Zharoff
P.O. Box 405
Kodiak, AK 99615

RE: STATUATE COMPLIANCE TO FINANCIAL RESPONSIBILITY

Your Honors Herrmann & Zharoff:

This past and previous year extreme problem has arisen with this Association, Naknek Electric Association, (N.E.A.) and our neighboring cooperative, Nushagak Electric Cooperative, (N.E.C.) and the Alaska Department of Environmental Conservation. (D.E.C.)

Compliance satisfaction with the Department to Section 1 as 46.04.040 (e) "Financial Responsibility" as formed in the law provides a very constraining element for a small rural utility to provide \$1,000,000 in financial responsibility, or bonding, or assurity.

We are put into this situation due to our geographic and economic location. With the requirements of providing economic and reliable electric service to our given service areas, we must have fuel; our fuel requirement constitutes near 50% of our production costs.

In an effort to reduce our costs, large volume storage vessels have been constructed by our respective utilities to facilitate bulk fuel procurement by joint bidding. One time a year we have delivery in our ice bound ports providing a year round supply along with reducing the exposure of handling fuel several times a year outside of our property.

The net result has brought down fuel costs per gallon to .3714 for this years fuel. This saving reduced the delivered kilowatt hour by .02¢ for each delivered kilowatt hour to the consumer. Likewise the first 750 kilowatt hours cap for Power Cost Equalization (PCE) has realized the same reduction of .02¢, saving the PCE fund \$168,885 for the two cooperatives. This saving is for the State of Alaska by prudent action of the cooperatives.

PAGE TWO
HERRMANN & ZHAROFF
November 1, 1985

Now then, the D.E.C. comes forth with unbending rules, regulations, and law forcing expenditures for premium of unobtainable insurance and or surity bonding, irrevocable line of credit or proof of financial responsibility; of course, the last being the most desirable but hereto unobtainable. If we do not have one of the previous required surities we are outside of the law and subject to severe penalty as well as being unable to obtain the necessary permit to off load fuel.

This year, after spending nearly 10 months searching the insurance market, (even from firms suggested by D.E.C., which incidentally flatly denied or did not respond to our broker) we were able to provide D.E.C. with unconventional one time surity for this years fuel off loading at our facilities. We have been put on notice that the same coverage will not be available next year. We, too, anticipate conventional underwriting will not be available nor will we be able to prove to satisfaction our financial responsibility to the unbending D.E.C.

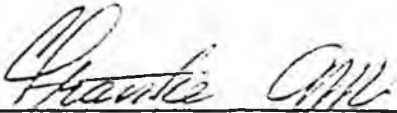
The law as written seems to be directed to non-permanent principals in the business of transporting fuel rather than permanent facilities such as ours. (N.E.A. and N.E.C.) These two cooperatives have taken due and concerned steps to build the best fuel and service systems we could with total attention to safety and integrity.

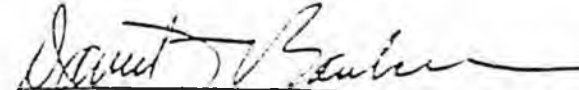
We and all utilities have every intention of continued existence with address to our responsibilities. What we are saying is, if we have a spill, we most certainly will clean it up without the constraints of the law imposing financial burden upon us, and more important yet, all of our consumers are members of the community, and our members derive their livelihood from the sensitive fishery environment and will see to it that we clean up any spill which may occur.

With all this discourse, hopefully, the stage is set to request your legislative efforts to amend Section 1 & 2 of AS. 46.04.040 (e) to read as attached.

If you have questions with our request for legislation, please feel free to contact us.

Sincerely,


C.E. Franke, General Manager
Naknek Electric Assoc., Inc.


Dave Bouker, General Manager
Nushagak Electric Cooperative

CEF/sp

cc: Dave Hutchens, Executive Director, A.R.E.C.A.
Roger Kemppel, N.E.A. & N.E.C., counsel
KEMPPEL, HUFFMAN, & GINDER

(a) Financial responsibility may be demonstrated by self-insurance, surety, possession of a certificate of public convenience and necessity, or guarantee, and the terms of such insurance or guarantee may prescribe. An insurer under AS 10.10.71a, 10.10.71b, or 10.10.71c may be held liable directly against the insurer or the person providing evidence of financial responsibility. The applicant, insurer, surety, or guarantor must be an agent for service of process of the insurer must either be authorized by the Department of Commerce and Economic Development to sell insurance in this state or be an unauthorized insurer under the Department of Commerce and Economic Development as not disapproved for use in the state.

Section 2. This Act takes effect immediately in accordance with AS 01.10.070 (c).



ALASKA RURAL ELECTRIC COOPERATIVE
ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 301
ANCHORAGE, ALASKA 99503 • (907) 276-3235

January 15, 1985

Representative Adelheid Herrmann
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Representative Herrmann:

Last November, Claude Franke and Dave Souker wrote you about a problem they were having -- and expecting to get worse -- caused by a statutory requirement that they buy strict liability insurance for oil spills. Both REC and REA have increased their fuel storage capacity in recent years in order to buy competitively priced oil and store it themselves. It was increasing their tank capacity above 10,000 barrels that makes this statute apply to them.

For 1985 we went through great difficulty to find a way to help these two small coops comply with the law. Their regular policy for general liability insurance issued by the ARSMA Insurance Exchange provided \$500,000 of oil spill insurance. There was no other oil spill liability insurance available for them to buy at any price.

To get the additional \$500,000 in coverage for them, what we had to do was to get them to indemnify the Exchange and post an irrevocable letter of credit payable to the Exchange to cover costs of oil spills between \$500,000 and \$1 million, and the Exchange then issued the insurance policy. This insurance policy met the D.C. requirements, but the coops were fully responsible for any losses exceeding \$500,000 which might have occurred. This arrangement cost them the fee for the letter of credit and the expenses incurred by the Exchange for details in so. Much more importantly, this approach cost a major part of their credit capacity, which then could not be used for normal business requirements.

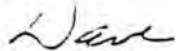
For 1985, even the ARSMA Insurance Exchange is reportedly unable to provide oil spill insurance because it is not possible for it to buy reinsurance covering oil spills. This means that the only way for REC and REA to comply with the law is to undergo the cumbersome and expensive process of obtaining the

entire risk of the \$1 million policy limit, and have the Exchange issue the \$1 million policy. But this would use nearly their entire line of credit! They might not even be able to borrow the money to buy the fuel which they would have sole responsibility to clean up if they spilled some of it.

This is an absurd situation which requires a legislative solution this session. Claude and Dave sent you a draft providing an easy way of resolving the problem. Our idea is that a certificate of public convenience and necessity for a utility should be proof in itself of financial responsibility. A utility isn't going anywhere. If a spill occurs, they will still be there and have the financial ability to pay for the clean up.

After consulting with the attorney who drafted it, I have slightly reorganized the proposed statutory amendment. We hope you will introduce a bill to resolve the problem being experienced by NEC and NEA and push it through to passage.

Sincerely,



David Hutchens
Executive Director

DH/CF

cc: Claude Franke, NEA
Dave Bouker, NEC

cc: Ken Johnson

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907) 465-2653

Address: Box 0

Juneau, Alaska 99811

January 27, 1986

JAN 28 1986

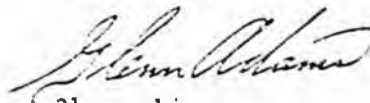
Mr. Dave Hutchens
ARECA Insurance Exchange
237 East Fireweed Lane, Suite 301
Anchorage, AK 99503

Dear Dave:

During your phone call last week to myself and Paul O'Brien, Manager of the Oil Pollution Program, problems of obtaining adequate insurance coverage for oil pollution damages were discussed. Paul agreed that I would review our files and send you the names of insurance underwriters that have current policies in force. I reviewed the files and came up with four underwriters and information on what other fuel handling companies are doing (enclosed); I am also sending a copy of the report from the Task Force on Insurance Availability and Pricing.

The Department of Commerce and Economic Development, Division of Insurance said they can provide "special market assistance" to the broker, their address is on the Task Force report. We will continue to work with the industry in every way that we can.

Sincerely,



Glenn Adams
Oil Pollution Control
Division of Environmental Quality

cc: Keith Kelton, Director
Bill Ross, Commissioner
Representative Adelheid Herrmann
Representative Rich Yenling
Senator Fred F. Charoff

January 23, 1986

INSURANCE INFORMATION FOR FUEL STORAGE FACILITIES

The following information is taken from current files that require proof of financial responsibility for oil pollution for "fuel storage facilities." This information is not an endorsement or recommendation but is provided in an attempt to help locate insurance coverage that will comply with Sec. 46.04.040(e) and 18 AAC 20.065.

Insurance underwriters and brokers that have currently active policies:

1. Lloyd's London and various companies
Broker - Pacific International Brokers, Ltd.
2. Employers Mutual Casualty Company
Broker - Mutual Marine Office, Inc.
3. National Union Fire Insurance Company of Pittsburgh, Pa.
Broker - Alaska 100 Insurance
4. Midlands Insurance Company, Inc.
by West Coast Marine Managers, Inc.
Broker - Masman and Associates, Inc.

The 34 files (representing 57 facilities) are broken down to show how many are using other means of providing proof of financial responsibility.

Surety Bonds	4
Guaranty	3
*Self-Insurance	12
Government	3
Insurance	3
Other	7

* Some use this means to cover deductible or financial records requirements for guaranty.

Of the eight showing insurance as their preference, five have policies that expired this December and January and are trying to renew their policies. There are seven new owners/operators that have not returned their application forms or shown what means of proof they intend to use.

Glenn Adams
Oil Pollution Control



ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, INC.

237 E. FIREWEED LANE • SUITE 201
ANCHORAGE, ALASKA 99503 • (907) 276-3235

February 21, 1986

Representative Mike Davis, Chairman
House Special Committee on Oil & Gas
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Mike:

As I indicated in our brief conversation yesterday afternoon, we would really like to get HB 623 moving and hope you will schedule it at the earliest opportunity. This letter is in response to a request from Jonathan for additional information.

Enclosed is a copy of my letter to Representative Herrmann asking that this kind of legislation be introduced. It gives the background to the problem, specifically for Naknek Electric and Nushagak Electric. Both are cooperatives and members of our organization.

Also enclosed is a copy of correspondence from Glen Adams, of the Department of Environmental Conservation, suggesting some other places to look for means of complying with the statute. When I received the letter from Glen, I gave a copy to our insurance consultant and broker, Corroon & Black, Dawson and Company. After they checked out each suggestion, Joe Piccione wrote me a letter detailing their findings. A copy of this letter is enclosed. It indicates conclusively that in today's insurance market, compliance is simply impossible.

Jonathan also asked which utilities have this problem, what are their tank capacities, and how often do they fill their tanks.

At present, Nushagak Electric and Naknek Electric are the only utilities which have had dealings with DEC on this issue. Kotzebue Electric also has new tank capacity sufficient to bring them into the same problem, but DEC has not yet made an issue of it with them. Nome Joint Utilities, a municipal utility, is negotiating to lease tank space to use in 1986. If their negotiations are successful, they will have sufficient capacity to face the same problem. (I hope that my responding fully to Jonathan's questions will not cause problems for Kotzebue or Nome.)

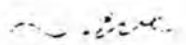
Representative Mike Davis
February 21, 1986
Page 2 of 2

The tank capacities for these four utilities will vary from approximately 20,000 to 35,000 barrels. They typically fill their tanks only once a year. That is why they need so much tank capacity in these ice-bound communities.

We understand that DEC has offered to "look the other way," but even a non-willful violation of this statute is a Class B Misdemeanor. Each day of non-compliance is a separate violation. This is a serious business that simply must be resolved legislatively.

Thank you for your interest. If you have additional information, please let me know.

Sincerely,


Dave Hutchens
Executive Director

Enclosures

DH:pn

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907)
Address:

OFFICE OF THE COMMISSIONER
P. O. BOX 0, JUNEAU, ALASKA 99811-1800

(907) 465-2600

March 25, 1986

The Honorable Mike Davis
Alaska State House
P. O. Box 7
Juneau, AK 99811-3100

Dear Representative Davis:

During the last several weeks, the Department has testified before the Oil and Gas Subcommittee on HB 628 and has worked with your office and staff from Representative Herrmann's office in addressing the difficulties faced by electric cooperatives in meeting the Department's oil pollution financial responsibility requirements. We have also been working closely with the Division of Insurance and representatives from the rural electric cooperatives in this matter. Based upon numerous discussions with legislative staff, the Division of Insurance, and a representative of the electric cooperatives, I believe that we have identified ways to resolve these issues.

Such a resolution is largely dependent upon the Department addressing two items: 1) amending our financial responsibility regulations to accept claims made insurance policies, and 2) clarifying the types of damages that are covered under the financial responsibility requirements. This letter is intended to show the steps I am preparing to take to satisfy these concerns, thereby enabling the cooperatives to meet the Department's financial responsibility requirements in a cost effective manner.

First, I am prepared to amend the Department's financial responsibility regulations to add claims made insurance policies as an option for oil facility operators such as the electric cooperatives. We have worked closely with the Division of Insurance on this change and have already started language to this effect. At the same time that we reevaluate our insurance requirements, we will be looking at the other options available for demonstrating proof of financial responsibility to determine if any other revisions to the regulations are necessary.

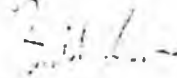
March 25, 1986

With regard to the second issue requesting clarification of the types of damages covered under the financial responsibility requirements, my staff has been in contact with the Attorney General's office on this matter. We have been assured that the Department's financial responsibility regulations apply to the operator's liability to others, i.e. third parties. Therefore, insurance policies should be available for this type of coverage. There has also been concern expressed by the cooperatives that insurance is not available to cover the civil damages and penalties referenced under the financial responsibility statutes. This position is predicated on the assumption that insurance will not pay for penalties of a punitive nature. However, the civil penalty and damage statutes referenced under AS 46.04.040 are not punitive. In fact, they are used for compensatory and remedial purposes associated with liquidated damages to the State. It is my understanding that insurance is available to cover these types of damages.

We have made substantial progress in identifying the issues and we have worked to resolve the financial responsibility problem that has been brought before the Legislature by the electric cooperatives. I believe that the action I have outlined above will solve the difficulty in obtaining insurance.

It should also serve to provide more flexibility in the regulations and make it easier for facility operators to satisfy the Department's financial responsibility requirements.

Sincerely,


Bill Ross
Commissioner

cc: Representative Adelheid Herrmann
Representative John Sund
Christian Ulmann, Division of Insurance
Dave Hutchins, ARECA Insurance Exchange

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-4941

HOUSE SPECIAL COMMITTEE ON OIL AND GAS

April 2, 1986

Commissioner Bill Ross
Department of Environmental Conservation
P.O. Box 0
Juneau, Alaska 99811-1300

Dear Commissioner Ross,

The House Special Committee on Oil and Gas recently held a hearing on HB 628 and, subsequent to this hearing, conducted several work sessions on the topic of the availability of oil pollution insurance to electric cooperatives. Members of your department, Rep. Herrmann's staff, the Division of Insurance, the Alaska Rural Electric Cooperative Association, and my office identified regulatory measures that could be taken to allow electric cooperatives to meet oil pollution financial responsibility requirements.

Your letter of March 25 acknowledged that the department would be willing to make appropriate regulatory changes as an alternative to the passage of HB 628. It is also my understanding that the department is willing to take the following actions in this regard:

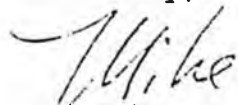
1. Amend 18 AAC 20.065 to allow for the submission of policies issued on a "claims made" basis in addition of "occurrence" policy forms.

2. Secure an Attorney General's opinion clarifying that the financial responsibility requirements apply only to third-party liabilities and not to damages to their own premises or to penalties or punitive damages, and supply that opinion to the electric cooperatives and their insurers.

3. As appropriate, either adopt regulatory changes through the emergency regulatory procedure or enter into an emergency compliance order with the affected utilities.

Thank you for your assistance and responsiveness in attempting to resolve this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mike".

Rep. Mike Davis, Chairman
House Special Committee on Oil and Gas

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
UNEAU, ALASKA 99811
PHONE 465-2515

DIVISION OF INSURANCE

April 24, 1986

Honorable Mike Davis
Alaska State House
House Special Committee
on Oil and Gas
P.O. Box 7
UnEAU, AK 99811-3100

Dear Representative Davis:

Re: HB 623. Oil pollution insurance availability
for electric cooperatives

After receipt of Commissioner Bill Ross's letter of March 25, 1986, which clarified the types of damages covered under the financial responsibility requirements, we were in a position to identify potential markets and have shared that information with the Alaska Rural Electric Cooperative Association (ARECA). Additionally, we contacted several underwriters in an attempt to generate interest in ARECA.

We found several possible options which are, at the present time, being checked out by ARECA's insurance broker:

The International Surplus Lines Insurance Company is the only writer of monoline pollution liability insurance at a reasonable rate. It appears that the electric utilities have a good chance to obtain insurance through this outfit.

The Pollution Liability Insurance Association (PLIA) is a reciprocal pool that arranges reinsurance for its member companies covering pollution liability. Alaska Statutes 21.75.020 and 21.39.110 do not prohibit ARECA from joining such an arrangement. ARECA might wish to check out the requirements for becoming a member. Since ARECA is not a member of PLIA, PLIA will write pollution liability in connection with the general liability only if the whole risk has been submitted by a member company. For ARECA, that means that they might have to split the accounts where pollution liability is required.

Honorable Mike Davis

-2-

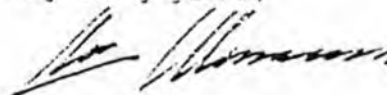
April 24, 1986

Further, we found other insurance companies that would write under the conditions outlined by Commissioner Bill Ross of the Department of Environmental Conservation. However, they did not seem to be very cost efficient. We also made recommendations on how to limit the liability exposures and, consequently, obtain a better rate.

We will continue to touch base with the insurance companies and ARECA and try to improve communications.

If you want or need more discussion, I will be happy to expand on this letter.

Very truly yours,



Christian Ulinann
Insurance Market Analyst
Commercial Lines

CU/ss0242Z

042486a

cc: Representative Adelheid Herrmann
Representative John Sund
Commissioner Bill Ross, Department of Environmental Conservation
Dave Hutchens, ARECA Insurance Exchange

MEMORANDUM

RECEIVED AUG 28 1986
State of Alaska

TO: Hal Brown
Attorney General
Department of Law

DATE: July 17, 1986

FILE NO:

TELEPHONE NO: 465-2600

FROM: *BR*
Bill Ross
Commissioner
Department of Environmental
Conservation

SUBJECT: Legal Opinion Re:
Financial Responsibility
Statutes AS 46.04.040

During the 1986 Legislature, legislation was introduced to exempt electric cooperatives from the Department of Environmental Conservation's oil pollution financial responsibility requirements. The filing of this bill was triggered by the difficulties that the cooperatives were experiencing in obtaining oil pollution insurance to meet the financial responsibility requirements of AS 46.04.040. This Department, the Division of Insurance, and the Department of Law worked closely with legislative staff and representatives from the electric coops to identify and resolve the insurance problems.

During hearings and discussions on this legislation, the electric cooperatives, raised concerns that the types of oil spill damages that they believed to be included under the financial responsibility regulations make it difficult to obtain insurance. Insurance representatives for the cooperatives indicated that insurance is not available for damages to the insured's own property or for penalties or damages of a punitive nature. The insurance industry maintains that insurance is only available for oil spill damages caused to third parties.

Consequently, during discussions of the bill, your office advised me that financial responsibility requirements did, in fact, extend only to third party liabilities. We were also informed that the Department's oil spill penalty and damage statutes are clearly not punitive but instead are used for compensatory and remedial purposes. I indicated my understanding of this advise in a March 25 letter to Representative Mike Davis.

As part of my effort to resolve this issue administratively, I agreed to request an Attorney General's opinion confirming the oral advise on the scope of damages that are compensable under our financial responsibility statutes. However, since the legislative session ended, we have found in our files a memorandum of advice dated May 13, 1982 that addressed most of the questions regarding financial responsibility that have been raised by the insurance representatives for the electric coops. Consequently, the only questions that remain to be answered concern the issue of third party liability coverage under the financial responsibility statutes. Specifically, I would appreciate your opinion on the following questions:

- What kind of oil spill liability (e.g. third or first party) is incurred by an oil operator demonstrating proof of financial responsibility under AS 46.04.040(i)? In other words, does the law require the operator to provide proof of financial responsibility to cover oil spill damages to the operator's own premises?

Hal Brown

-2-

July 17, 1986

Attached are copies of HB 628, my March 25, 1986 letter to Representative Davis, his response of April 2, 1986, and the 1982 memo of advice for your information. If your staff has any questions on this matter, Paul O'Brien, oil spill program manager, can provide additional information. Thank you for your assistance.

Attachments

cc: Doug Mertz

PO/bb



ALASKA

NUSHAGAK ELECTRIC CO-OPERATIVE, INC

P. O. BOX 350 . DILLINGHAM, ALASKA 99576 . AREA CODE (907) 842-3251

January 23, 1987

Senator Fred Zharoff
Representative Adelheid Herrmann

Thank you for giving us the opportunity to share some thoughts with you this date. Unfortunately I have a prior commitment and so will not be able to communicate with you in person but hopefully this short note will be better than nothing.

There are two major issues that are of concern to Nushagak Electric as well as to most of the rest of the rural utilities to some degree.

2. The second issue involves the financial responsibility insurance required for "terminal operators" as outlined in AS 46.04.040. This statute adversely impacts Naknek Electric, Nushagak Electric, the City of Nome and Kotzebue Electric because it requires that "terminal operators" I.E., those entities having over 10,000 barrels of fuel storage to purchase financial responsibility

insurance for the trans-shipment of fuel oil across the dock to the tank farm.

For Naknek Electric and Nushagak Electric, this process takes about 36 hours each and in 1986 we each had to buy insurance costing \$10,400 to comply with the statute. This cost each one of Nushagak Electric consumers about \$10.00 each.

This issue was raised in HB 628 which was sponsored by Herrmann and Adams last year. Unfortunately it did not go anywhere. However the problem is still with us. It seems to me that the statute was originally intended for oil terminals and shippers who may have been characterized as being of a more temporary nature. We, the utilities, are not temporary. We are a permanent part of the community and providing a necessary community service. In doing this, we have complied with all Federal and State regulations relevant to fuel handling. The U.S. Coast Guard oversees our fuel loading process. With all of the precautions taken, I find it difficult to reason why the State Statutes should require these rural communities to provide evidence of financial responsibility when they are least capable of doing so and when the U.S. Government does not require it.

Thank you again for your time and consideration of our concerns. I know I speak for all of the NEC Board of Directors and Membership of the Co-operative when I wish you a productive session this year in Juneau.

Yours very truly,

[Handwritten signature]