

SB

142



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 .02½¢ 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 .02½¢, 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.

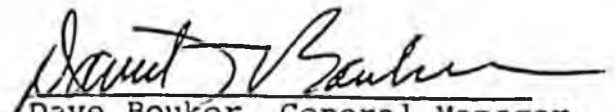
With all this discourse, hopefully, the stage is set to request your legislative efforts to amend Section 1 & 2 of AS. 46.04.040 (e) to read as attached.

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
KEMPEL, HUFFMAN, & GINDER



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.

1. As you are well aware, the PCE program has been of tremendous benefit to the rural areas for the last five years or so. It has alleviated nearly 20 million dollars of annual energy costs to rural consumers. There is no doubt that it has had a large beneficial impact.

I suspect however that like all other good things it must be reduced in order to accommodate the impact of reduced oil revenues accruing to the State. My first reaction was to simply reduce the coverage across the board I.E., reduce the amount of KWH subsidized to all present recipients. After some thought however, I believe it would be better to limit the PCE program to residential consumers only with two exceptions: community water and community sewer facilities. These services are vital and essential to every community and they do need power to operate effectively.

In closing I do believe that all PCE recipients should utilize the same cap on KWH covered. This would eliminate the potential for tying a community facility that is not essential to the electric service for water or sewer facility. Some communities are supporting pool halls, ski tows, laundromats, etc. and while these activities may be classified as worthwhile, they would hardly be classified as essential.

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

Senator Fred Zharoff
Representative Adelheid Herrmann

January 28, 1987

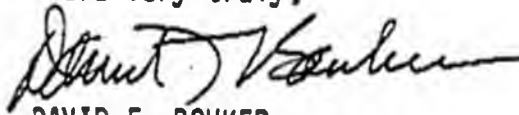
Insurance for the trans-shipment of fuel oil across the dock to the tank farm.

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,



DAVID F. BOUKER
Manager



MAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 115 • MAKNEK, ALASKA 99615 • PHONE (907) 245-4757

September 10, 1986

The Honorable Fred Zharoff
Box 405
Eadsak, Alaska 99615

Dear Senator Zharoff:

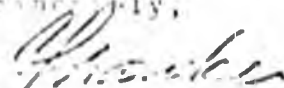
Enclosed please find copies of two checks favoring Corroon & Plack our insurance brokers, for Oil Spill Insurance required by D.E.C. regulations. The premium of \$10,000.00 will ultimately end up in the hands of non-best rated Surplus Insurers of Illinois, while the remaining \$400.00 is an investigative fee for the Alaska Insurance Commission.

I write with a two fold purpose - one, to point the economics impact to the consumer. Each consumer of Maknek electric Association will be paying \$1.25 a month for this unneeded coverage placed upon us by a regulation not even intended for us. I'm certain the money could be used for food on the table rather than this insurance coverage. Secondly, D.E.C. requires the coverage, but only two companies in the United States will write the coverage while neither are listed in "Best Ratings". We are not certain they would honor a claim if we had a claim.

Once again we request your legislative assistance to rid ourselves of this insurance constraint in the conduct of our business and your constituents.

Thank you.

Sincerely,


Claude Fraake
General Manager

Enclosure
cc. Representative Herrmann

NAKNEK ELECTRIC ASSOCIATION, INC. • P.O. BOX 118 • NAKNEK, ALASKA 99533

0010673

CORROON & BLACK

152.1

\$ 400.00

Spill Insurance



NAKNEK ELECTRIC ASSOCIATION, INC.

POST OFFICE BOX 118 • NAKNEK, ALASKA 99533 • PHONE (907) 318-4111

FIRST INTERSTATE
BANK OF ALASKA
FOUNDED 1912
ANCHORAGE, ALASKA 99501

FD-51
1252

0010673

PAY ***FOUR HUNDRED DOLLARS AND NO/100-

TO THE
ORDER
OF

CORROON & BLACK, INC.
4220 "B" Street
Anchorage, AK 99503

By:

[Signature]
AUTHORIZED SIGNATURE

09-03-86

\$ 400.00

⑆0010673⑆ ⑆225200362⑆ 57008 592⑆

NAKNEK ELECTRIC ASSOCIATION, INC. • P.O. BOX 118 • NAKNEK, ALASKA 99533

0010672

CORROON & BLACK, INC.

152.1

\$ 10,000.00

Spill Insurance



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POST OFFICE BOX 118 • NAKNEK, ALASKA 99533 • PHONE (907) 248 4261

FIRST INTERSTATE
BANK OF ALASKA
PO BOX 7612
ANCHORAGE, ALASKA 99510

09-03
1252

0010672

PAY **TEN THOUSAND DOLLARS AND NO/100

ORDER
OF

CORROON & BLACK, INC.
4220 "B" Street
Anchorage, AK 99503

By:

By:

09-03-86

10,000.00

⑆010672⑆ ⑆2520036⑆ 57000 592⑆



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

ARECA

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 46.03.758 - 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.



CORROON & BLACK, INC.

4220 "B" Street
Anchorage, Alaska 99503
907-562-2266 Telex: 25-109

February 6, 1986

David Hutchens
Chairman
ARECA Insurance Exchange
237 East Fireweed Lane, Suite 301
Anchorage, AK 99503

RE: Pollution Liability

Dear Dave,

Pursuant to your request for current information on the availability of Pollution Liability coverage for Alaska risks required to provide proof of financial responsibility for oil pollution for "Fuel Storage Facilities", in compliance with Alaska Statute Sec. 46.04.040(e) and 18AAC 20.065, here are my findings after contacting various carriers and brokers, including those insurance underwriters and brokers who have current active policies.

- (1) Lloyds of London & various companies - This market does not offer on-shore Pollution coverage and has not done so since 1983.
- (2) Employers Mutual Casualty Co. - This market does not write monoline Pollution Liability coverage. They are a member of the Pollution Liability Insurance Association (PLIA) and only offer Pollution Liability coverage in conjunction with other lines of coverage (Property, General Liability, and Business Auto.) Further information revealed that they do not write this coverage in Alaska although they are an admitted carrier in the state of Alaska.
- (3) National Union Fire Insurance Company of Pittsburgh, Pa. - This is the only insurance carrier that I was able to confirm is still affording monoline Pollution Liability coverage for on-shore storage facilities. Their form does not comply with Alaska Statute unless endorsed to provide Defense Costs for plaintiff's attorneys as a supplemental limit. Basic form includes Defense Costs within the Aggregate Limits of Liability. Further, their form does not

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comply with Alaska Statute unless amended to remove the exclusions pertaining to resultant Property Damage to: (a) Property owned or occupied or rented to the Insured, (b) Property used by Insured, or (c) Property in the Care Custody or Control of the Insured or as to which the Insured is for any purpose exercising physical control.

It is extremely unlikely that this carrier would remove these standard exclusions pertaining to damage occurring to and on the Insured's premises, including the cost of clean-up.

- (4) Midlands Insurance Company, Inc. - This particular insurer has an A. M. Best's "Omitted" rating. The financial security of this market is questionable. In contacting this carrier, I was advised that they are no longer a Pollution Liability coverage market.

In summary, 97% of the capacity previously available has disappeared during the last 12 months. The premiums for Pollution Liability coverage have sky rocketed up to 1000%. There is only one available monoline Pollution Liability market writing in Alaska. This carrier is National Union Fire Insurance Company of Pittsburgh, Pa. with an A. M. Best rating of A+ XV. They have recently announced that as of December 1985 they do not want to write risks that are primarily tank oriented. Therefore, availability is questionable since their recent announcement. If even available, the terms offered are subject to \$250,000 minimum deductible at a cost indication of between \$40,000 - \$250,000. Limits available, if offered, are up to \$10,000,000.

Further checking found that there is a Pollution Liability Insurance Association, referred to as PLIA, with approximately 18 member insurers, including but not limited to, Employers Mutual Casualty Company, Chubb Insurance Group, U. S. Fire, Crum & Forester, Ranger, Century, and Industrial Indemnity. Unfortunately, a lot of these insurers do not write in Alaska and all member companies require the supporting lines of coverage (Property, General Liability, and Business Auto) be written with them to consider entertaining Pollution placement.

We have also explored the possibility of purchasing a Surety Bond or Financial Guaranty as another means of providing proof of financial responsibility. Neither of these two means are true insurance, but rather an immediate remedy to a demand for payment should a loss occur. The ultimate responsibility for

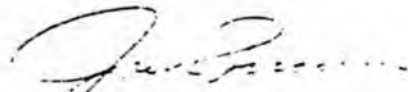
CORROON & BLACK/DAWSON & CO., INC.

the loss is still born by the individual utility, since this is really a pass-through coverage via the indemnity requirement of the Bond or Guaranty.

The premium for such coverage is very expensive and at times equal to the Bond limit or Guaranty required, plus the cost of the Bond. With the deteriorating experience on this type of bonding, the number of carriers willing to write are limited, and those who write the coverage are very expensive.

I hope that my findings will be helpful to you in presenting the Pollution Liability coverage options available, or the lack thereof, for your member utilities.

Sincerely,



Joe Piccione, CPCU
Marketing Manager

JP:sd

Attachment

cc: Wayne Brown
Nancy Jo Brown



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

277-1604

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.

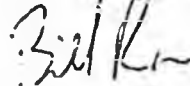
March 25, 1986.

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

MEMORANDUM

State of Alaska

TO: Hal Brown
Attorney General
Department of Law

DATE: July 17, 1986

FILE NO:

TELEPHONE NO: 465-2600

FROM: *B.A.*
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?

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 Hertz

P0/bb

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November 17, 1986

Department of Environmental Conservation
Water Quality Management
P.O. Box 0
Juneau, Alaska 99811-1800

RECEIVED NOV 18 1986

ATTENTION Glenn Adams

Re: Proposed Financial Responsibility Regulations
Amendments
Our File No. 83-683.53

Dear Mr. Adams:

These comments are being submitted on behalf of Alaska Rural Electric Cooperative Association, Nushagak Electric Cooperative, and Naknek Electric Association regarding the proposed amendments to 18 AAC 20.055, Self Insurance, and 18 AAC 20.065, Insurance. Pursuant to our telephone conversation of November 12, 1986, it was agreed that these comments would be considered timely if received during the week of November 17, 1986. Thank you for the courtesy extended in this regard.

As you no doubt recall, complying with DEC financial responsibility regulations concerning operation of oil terminal facilities has proven to be quite difficult for the small electric cooperatives. This matter was the subject of proposed legislation during the last session. At that time, the prime sponsor of the proposed legislation, Adelaide Hermann, agreed to withdraw the legislation based upon an understanding that appropriate regulatory changes would be made which will allow the electric cooperatives to either obtain insurance or self insure for the operation of oil terminal facilities.

The proposed amendments in 18 AAC 20.065 which allow for "claims made" policies are a step in the right direction. However, given the vagaries of the insurance industry, obtaining this type of coverage in the future may be extremely difficult. "Claims made" policies were found for Nushagak Electric Cooperative and Naknek Electric Association this year; however, the premiums were extremely high. In the case of Naknek Electric Association, the premium amounted to approximately one-half mil per kilowatt hour of usage. The premium for obtaining this insurance is passed along to the ultimate consumer.

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It appears clear that the intent of the regulations is to ensure that oil terminal facility operators, as well as others, have a sufficient stake in Alaska such that reasonable practices will be employed when handling oil. In this regard, the rural electric cooperatives are an integral part of the villages within the state of Alaska and will be here for years to come.

Because of this, it would appear appropriate that DEC amend its regulations concerning self insurance to allow the cooperatives to qualify. We would urge that DEC amend 18 AAC 20.055 to allow the cooperatives to do just this. While amending the regulations to allow for "claims made" policies is a step in the right direction, it falls far short of solving the problem faced by these cooperatives.

Thank you for the opportunity to comment on the proposed regulations. We look forward to working with DEC on this matter.

Sincerely,

KEMPEL, HUFFMAN AND GINDER, P.C.
Attorneys for ARECA, NEC and NEA



Bobby Dean Smith

BDS:la

cc: David Hutchens
Executive Director, ARECA

David F. Bouker
General Manager, NEC

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