

HR

7



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SPONSOR STATEMENT

HR 7

The proposed treaty by the International Maritime Organization that would reclassify coal as a hazardous and noxious material would require producers of coal to contribute to a fund that would be used to cover compensation claims arising from the environmental catastrophes involving other materials. This is a carefully crafted tonnage based tax on the coal industry that would raise the cost of coal three to four dollars each time it is handled either at the loading or unloading ends of transportation. The net result of this would have a devastating effect on the production of Alaska Coal.

IMO still to tax coal as hazardous waste

Moves to reclassify coal as a hazardous waste continue to cause concern in the coal industry. Under International Maritime Organisation (IMO) proposals, coal would be included in the Hazardous and Noxious Substances Convention from 1996, meaning that users of the material would be forced to contribute to a fund to cover compensation claims arising from environmental catastrophes at sea.

Those in the coal community say there is no justification for including coal in the list and that the industry will suffer through having to subsidise damage caused by more obviously hazardous materials in its sector, such as ammonium nitrate. However, many feel that it is the huge amounts of coal shipped by sea that make it attractive to those collecting the tonnage-based tariffs.

Under the proposals, coal parties would have to pay \$3-4 per tonne for each time the coal was handled, covering exporting and receiving ports. Transhipped coal would therefore carry a treble levy of at least \$12 a tonne.

The proposal is due to be discussed in detail at the IMO's interim meeting this April in London, having been opposed by a host of coal bodies and governments, most vocally from Japan, Italy and the US.

Dominic Maiello, a leading member of the European Union Coal Committee and the United Nations Coal Working Party said "There has never been a case of sea, beach or human contamination that has exceeded normal insurance cover. If people are made to fear this tax on top of proposals to levy a carbon tax and a little help from the gas industry's propaganda machine, coal is going to be killed off forever."

Why did the chicken cross the road? To fuel a power plant...

Farmers in the United Kingdom are being urged to save their chicken manure and to plant trees on surplus land to provide new fuels for power stations, in a scheme announced by the UK's Department of Trade and Industry (DTI).

The scheme is part of a programme to set up renewable-energy power stations driven by a variety of methods, which also includes straw and household waste-firing, wind and water power.

Charles Wardle, junior minister for industry and energy said the UK government was anxious to foster technologies of the future as part of its Non-Fossil Fuel Obligation (NFFO) which is intended to ensure diversity of power supply.

Three projects requiring a total 20,000 acres of tree planting to feed the furnaces of three power stations would produce electricity at 8.45 pence a unit, more than three times the cost of coal.

Farmers in England and Wales will be paid to plant genetically engineered poplars and willows, which grow so fast that harvesting of the wood can begin in two years. The 90,000 tonnes of wood



Is wind the fuel of the future?

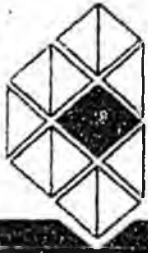
produced each year would be turned into gas in special furnaces before being piped into power stations.

Power from chicken manure or straw (occasionally mixed with waste wood) is another boom area and a cheaper option at around five pence a unit. The prices are expected to drop as the technologies improve.

Landfill gas is such a proven generator that it is the cheapest renewable resource for producing electricity. Forty-two such schemes were approved by the DTI.

More controversial schemes for producing electricity by burning household and industrial waste are likely to be encouraged by the government's Landfill Levy, which will make local authorities more inclined to send their rubbish to power-generating incinerators.

Some of the schemes are expected to fail because of planning objections, since to be economic they often have to be sited in residential areas. In England and Wales there were 520 bids, of which 141 projects were approved.



COAL news

December 19, 1994 • No. 5218

The Weekly Newsletter of The National Coal Association

C O L U M N I

By V. Sam Lewis

IMO activity regarding HNS has potential for severely impacting U.S. coal exports

Those of us active in the international marketing of U.S. coal become so focused on demand and prices that we often overlook activities in international forums that have the potential for severely impacting U.S. coal exports.

One such activity is the International Maritime Organization (IMO) protracted drafting of a regime for the liability and compensation for damage caused in connection with the carriage of hazardous and noxious substances by sea. Before you skip to the next page of the newsletter, the Hazardous and Noxious Substance Convention (HNS), as currently drafted, includes coal and has the potential for adding significant costs to coal.

What is the HNS?

Since 1987, the Legal Committee of the IMO has been drafting the HNS and using the 1969/1971 Conventions on Oil Pollution Liability and Compensation as its models. It is IMO's intention to hold a diplomatic conference in 1996. If successful, the HNS Convention will have to be approved by Congress.

The convention defines HNS to include "solid bulk materials possessing chemical hazards covered by Appen-

See COLUMN 1, page 2



Republicans push administration for moratorium on regulations

The White House last week rejected a Republican proposal to impose a regulatory moratorium, calling it a "blunderbuss that could work in unattended ways."

Eight Republican leaders in both houses of the newly elected GOP-controlled Congress — including Senate Majority Leader Robert Dole (R-Kan.) and House Speaker Newt Gingrich (R-Ga.) — sent a Dec. 12 letter to President Clinton, requesting a moratorium on all federal rulemakings through the first 100 days of the 104th Congress.

During that time, the lawmakers requested federal agencies provide Congress a list of current and proposed regulations with costs to society that outweigh intended benefits, as well as recommendations for eliminating any unnecessary regulations and providing flexibility for local governments in



White House calls proposal a "blunderbuss"

meeting U.S. mandates.

"Excessive regulation and red tape have imposed an enormous burden on our economy," the GOP letter said. "Private estimates have projected the combined direct cost of compliance with

all existing federal regulations to the private sector and to state and local governments at well over \$500 billion per year."

In a response to the GOP leadership, Sally Katzen, a White House official who handles regulatory affairs, said while "burdensome regulations need to be cut back," the Republican proposal "would stop rules from being issued regardless of their merit."

Some observers said even though the administration decided against the moratorium, Congress could impose it legislatively, a move which might be politically damaging to the White House.

One House Republican staffer said the new Congress is going to "do some fairly significant things" with risk assessment and cost/benefit analysis legislation.

Meanwhile, a news conference was held on Capitol Hill last week announcing the creation of Project Relief, a nationwide coalition formed at the request of incoming House Republican Whip Tom DeLay (R-Texas). The group seeks reform of the way the government develops regulations.

NCA, CEA oppose ECE draught survey proposal

NCA and the Coal Exporters Association (CEA) said they oppose adoption by the International Standards Organization (ISO) of a draft international standard for the performance of draught surveys of coal cargoes, as proposed by the Economic Commission for Europe (ECE).

"We fail to understand why coal is being singled out as the only bulk cargo requiring an ISO standard for the performance of a draught survey," the groups said in comments filed with the U.S. Coast Guard.

"If ISO is going to adopt a standard, it should be a standard setting out draught survey procedures for all bulk cargoes."

In addition, the ECE Code "does not

See DRAUGHT SURVEY, page 4

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C O L U M N I

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dix B of the Code of Safe Practices for Solid Bulk Cargoes, as amended." The appendix includes coal as a hazardous material when in bulk (MHB).

The current draft is based on a post-event system of collection. It establishes a two-tier system of strict liability for damage. The first tier is comprised of the shipowner, who will be required to carry compulsory insurance to cover liability up to a yet determined level. The shipowner liability, or first tier, is supplemented by a second tier establishing a scheme or fund to provide additional compensation when the damage exceeds the shipowner's liability.

The second tier currently is comprised of two sectors: Sector 1) solid, liquid or gas; and Sector 2) high volume, low hazard (Appendix B of the Code of Safe Practice for Solid Bulk Cargoes, as amended). Appendix B includes substances of very diverse properties. For instance, coal, wood chips and ammonium nitrate are included in the list. Coal and wood chips are not hazardous and noxious substances while ammonium nitrate can be very explosive.

As currently outlined, Sector II would have a "0" rating until an accident occurred with a Sector II substance in which the liability exceeded the shipowner, or first tier, liability. At that point, the second tier would be responsible for the additional liability. Once Sector II is "activated," it and Sector I would be responsible for providing funds to cover additional liability associated with any future incidents requiring compensation from the second tier.

It is very important to note that even if coal does not have an accident requiring funds from the second tier, but a substance in Sector II does have an accident requiring compensation, all substances in Sector II become active and must contribute.

A limited number of separate accounts would be specified in the convention and these accounts may cover oil, LNG and possibly LPG. Finally, as currently proposed, the HNS Convention also would apply to domestic coast-wise trade as well as international trade.

What is the Coal Industry Doing?

NCA and its affiliate, the Coal Exporters Association, oppose the inclusion of coal in the HNS. In letters sent to the U.S. Coast Guard, the

lead U.S. agency to the IMO, NCA/CEA have pointed out that it was not the original intent to include materials such as coal, which are high volume but not hazardous and noxious substances. NCA/CEA maintain that the selection of materials to be covered in the convention should be based upon known, accepted guidelines that clearly show that the included materials are hazardous and noxious substances. Criteria do not exist to include coal in the convention; in fact, criteria do exist to indicate that it *should not* be included.

The IMO's Marine Environment Pollution Committee specifically asked the GESAMP EHS Group to evaluate the potential marine pollution hazards from the discharge of solid bulk cargoes. In July 1992, the GESAMP evaluated the hazardous properties of coal. Coal was given a "C" rating for bioaccumulation and tainting, hazard to human health (oral intake and skin contact) and for reduction in amenities. It was noted: coal dust may cause mild skin irritation if it comes in contact with the skin; coal, with regard to damaging living resources, is not hazardous but it may blanket the bottom of the sea; and coal, with regard to the reduction of amenities, may be slightly objectionable but will not interfere with the use of beaches. It is clear from these hazard factor rankings that coal is not a hazardous and noxious substance with environmental/property risks that prompt its inclusion in the convention.

With regard to coal's inclusion in Appendix B, NCA/CEA have pointed out that the purpose of Appendix B is to provide guidelines for the safety of vessel and crews as solid bulk cargoes are loaded, during ocean transport and unloaded at the port of destination. Coal's ranking of MHB (materials hazardous only in bulk) is defined by IMO as "materials [which] when carried in bulk, present sufficient hazards to require specific precautions." Specifically, the Code of Safe Practices addresses two possible hazards (oxygen reduction in the cargo space and self-heating) in connection with the transport of coal. The Code carefully outlines guidelines to be adhered to which should significantly reduce or eliminate the hazards.

What is the Current Status of the HNS?

The next meeting of the Legal Committee is scheduled for early April 1995. At the last meeting in October, several countries raised the issue of excluding coal from the HNS. It was tabled for possible discussion at a future meeting of the Legal Committee or the Diplomatic Conference in 1996. It is expected that the issue to exclude coal from the HNS will be formally raised at the next meeting by Japan with the support of several other countries.

The U.S. government currently is developing its position on the inclusion of coal. It is extremely important that the U.S. coal industry as well as those in the shipping community express opposition to the inclusion of coal in the HNS. Also, as contracts for 1995 are negotiated, it is vital that we bring the HNS to the attention of our customers and strongly encourage them to contact the appropriate

government offices to register opposition to the inclusion of coal. Both coal exporting and importing nations should unite in widespread and strong opposition to including coal in a convention covering HNS damage.



Criteria does not exist to include coal in the convention

NCA and its affiliate, the Coal Exporters Association, oppose the inclusion of coal in the HNS.



**USIBELLI COAL MINE, INC.**

MARKETING

122 First Avenue, Suite 302

Fairbanks, Alaska 99701

(907) 452-2625 FAX (907) 451-6543

January 18, 1995

Honorable Ted Stevens
United States Senate
522 Hart Building
Washington D.C. 20510-0201

Dear Senator Stevens:

Attn: Kristen Richmond and Trevor McCabe
U.S. Senate Commerce Committee

The Coal Exporters Association of the United States (CEA) is very concerned that the current draft of the International Maritime Organization (IMO) Hazardous and Noxious Substance (HNS) Convention includes coal. As a member of the Board of CEA representing Usibelli Coal Mine, Inc., I am soliciting your interest and involvement in this issue. There is absolutely no evidence to suggest that coal should be included in the Convention, and to do so would constitute a means of increasing the costs of doing business. Since the HNS Convention is a treaty it would eventually require ratification by the US Senate - we would obviously like to see coal excluded completely from the Convention.

Enclosed is a copy of NCA's latest newsletter that includes a "Column One" written by Sam Lewis, CEA's Chairman. The Interagency Working Group comprised of several government agencies (MARAD, Dept. of Justice, State Department, Dept. of Energy, Dept. of Commerce, etc.) is developing its position on the inclusion/exclusion of coal. It appears the Working Group is split. The Interagency Working Group was slated to meet again on January 17.

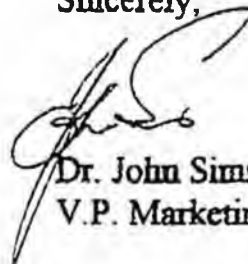
I have also included a letter written by NCA President Richard Lawson and Sam Lewis, Chairman of CEA to the Coast Guard detailing the coal industry's opposition. I should point out that, in addition to the arguments outlined in the letter, the US Coast Guard does not include coal in its listing of hazardous marine pollutants (CFR parts 171 & 176) as published in the Federal Register November 5, 1992.

Senator Stevens
January 18, 1995
Page 2

This is an issue which falls within the jurisdiction of committee(s) on which you serve. I would like to suggest that you express your concern to the Commander of the Coast Guard and the Secretary of Transportation and I would further ask that you track this issue and oppose inclusion of coal in the version of the HNS Convention that the US Senate may eventually approve.

I appreciate any assistance you can render in this regard.

Sincerely,



Dr. John Sims
V.P. Marketing

JS/me

Enclosures

cc: Moya Phelleps - CEA

**USIBELLI COAL MINE, INC.**

MARKETING
122 First Avenue, Suite 302
Fairbanks, Alaska 99701
(907) 452-2625 FAX (907) 451-6543

March 6, 1995

Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510-0201

Dear Senator Stevens:

Thank you for your action regarding inclusion of coal in the I.M.O. draft Hazardous and Noxious Substance (HNS) Convention. I have learned that MARAD officials Fran Mardulo (MARAD representative on the Interagency Working Group), Cher Brooks (Congressional Liaison) and Joan Bondareff (General Counsel) met with National Coal Association executives Susan Carver and Moya Phelleps last week. The MARAD delegation had received your letter, which clearly prompted the meeting, together with copies of my letter to you on the subject and the NCA/CEA letter to the Coast Guard.

The meeting, I am informed, was inconclusive with MARAD failing to indicate its position. MARAD explored the possibility of seeking to categorize coal within a separate account (currently coal is included in the draft together with other commodities of a diverse nature).

The idea of a separate account category for coal in the HNS Convention is opposed by the National Mining Association (NMA) and the Coal Exporters Association (CEA) and by USIBELLI COAL MINE, a committed member of these industry associations. This opposition is rooted in the following reasons.

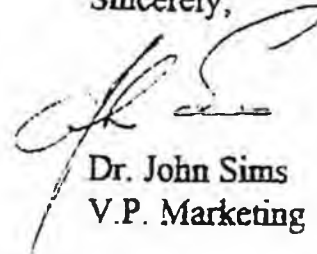
1) Coal is not hazardous material. This convention addresses the environmental and safety hazards of hazardous materials. U.S. Coast Guard does not list coal as hazardous material and it was not included as such in the International Convention on Prevention of Pollution from Ships (MARPOL 73/78 and subsequent modifications) not in the International Convention for the Safety of Life at Sea (SOLAS 1974 and subsequent modifications). Furthermore coal is not included in the International Maritime Dangerous Goods Code.

Senator Stevens
March 6, 1995
Page 2

2) By including coal in the HNS Convention it would be assumed that coal is indeed hazardous by nature and that of itself could result in changes in insurance ratings to be borne by industry.

Again thank you for your interest and involvement in this issue.

Sincerely,



Dr. John Sims
V.P. Marketing

JS/me

cc: Senator Frank Murkowski
Congressman Donald Young
Susan Carver
Moya Phelleps
Joseph E. Usibelli, Jr.

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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, DC 20510-6025

January 30, 1995

Dr. John Sims
 Vice-President Marketing
 Usibelli Coal Mine, Inc.
 122 1st Avenue, Ste. 302
 Fairbanks, Alaska 99701

Dear John:

Thank you for letting me know about your concerns with the inclusion of coal in the current draft of the International Maritime Organization Hazardous and Noxious Substance Convention.

In an effort to address the concerns you have raised, I have contacted the Department of Energy, the State Department and the Maritime Administration and requested that they address this matter. Once I receive their responses, you can be sure that I will share them with you.

With best wishes,

Cordially,



TED STEVENS



National Mining Association
Foundation For America's Future

March 3, 1995

TO: John Sims, Usibelli Coal Mine
FROM: Moya Phelps *M. P.*
RE: Draft HNS Convention -- Meeting with MARAD

As follow-up to our telephone conversation yesterday, Susan Carver and I met with MARAD on Wednesday to discuss our position regarding the inclusion of coal in the draft HNS.

We met with Cher Brooks (Congressional liaison), Fran Mardulo (MARAD representative on Interagency Working Group) and Joan Bondareff (General Counsel). MARAD has not taken an official position on the inclusion of coal. MARAD received a letter from Senator Stevens with your letter and the NCA/CEA letter to the Coast Guards as attachments. The letter from Senator Stevens is what prompted this meeting.

We discussed our opposition to the inclusion of coal in the HNS. Questions were asked about the safety of coal and I said the Code of Safe Practices and other mechanisms address that issue. Coal is not a hazardous material from either the safety or environmental aspects. Mr. Mardulo agreed that the current structure is not correct and our concerns regarding the cross-subsidization, etc. were correct. He asked how we felt about a separate account. I told him we opposed a separate account because 1) coal is not a hazardous material; 2) current insurance levels for coal are among the lowest and being included in the Convention could increase rates and open coal up to be included in other regulations, etc. that currently do not apply to coal because it has not been classified as a hazardous material.

MARAD indicated they would be preparing a response to Sen Stevens. They did not indicate MARAD's position. However, both Susan and I felt that they may be inclined to support the idea of the separate account. It is a compromise position as they see it:

- 1) Coal would be responsible only for coal claims above the first-tier or shipowner level.

2) If we are as safe as we say we are and claims will not be enough to trigger the second-tier, then we have nothing to worry about.

3) It doesn't jeopardize the integrity of the convention by carving out coal and opening up the convention to materials that could make claims similar to those made by coal. (In my opinion, this is a major problem for the Legal Committee. In the haste to find an existing list, Appendix B was not the one to choose. The materials on the list are too diverse.)

As we discussed, it would be helpful if Usibelli wrote to Senator Stevens to let him know that NIMA/CEA met with MARAD. The idea of a separate account was discussed at the meeting and we oppose it for the following reasons:

1) Coal is not hazardous material. This convention addresses the environmental and safety hazards of hazardous materials. It is not a hazardous material. Coast Guard does not list it as one. It is not in SOLAS or MARPOL.

2) By including coal in the Convention, it would be assumed that coal is a hazardous material and could change insurance ratings and how it is treated in other IMO or domestic codes for bulk or hazardous materials.

I am sending you the joint UMWA/BCOA letter. As always, we appreciate your assistance. I will keep you informed of developments.

Attachment

cc: Susan Carver
Tom Altmeyer

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United States Senate

COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-6025

March 10, 1995

Dr. John Sims
 Vice-President Marketing
 Usibelli Coal Mine, Inc.
 122 1st Avenue
 Suite 302
 Fairbanks, Alaska 99701

Dear John:

Enclosed is a copy of a letter I received from the Department of Energy in response to my inquiry on your behalf regarding the inclusion of coal in the current draft of the International Maritime Organization Hazardous and Noxious Substance Convention. I will let you know when I receive a response from the Maritime Administration and the State Department.

I hope you find this information useful.

With best wishes,

Cordially,



TED STEVENS



Department of Energy

Washington, DC 20585

March 3, 1995

1995 MAR -7 AM 10 30

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Senator Stevens:

This is in response to your letter of January 30, 1995, on behalf of your constituent, Dr. John Sims, regarding the issue of including coal in the current draft of the International Maritime Organization (IMO) Hazardous and Noxious Substance (HNS) Convention.


Member countries of the IMO, which includes the United States represented by the Coast Guard, included coal in the draft HNS Convention. We believe this classification of coal as an HNS is not warranted. Since the drafting of the HNS list, several countries, most notably Italy, Canada, Australia, and Japan, have either expressed their objection to this classification of coal, or have indicated they may reconsider their previous positions.

Reflecting its concern over this issue, the Department of Energy (DOE) prepared a position paper supporting the exclusion of coal from the HNS list. This position paper was coordinated with representatives of the National Mining Association. The DOE position has been transmitted to the HNS Interagency Working Group for its consideration. It is our understanding that one of the options being considered, besides the complete exclusion of coal, is to set up a separate account for coal. This means that it would not be lumped with other substances such as wood chips, wood pulp, and ammonium nitrate. At this time, no final U.S. position has been adopted.

The treaty is in the final stages of negotiation, with a final draft to be produced in April 1995. The final text will then be forwarded to the Diplomatic Conference for possible adoption in early 1996.

We appreciate your interest in this matter.

Very truly yours,


Patricia Fry Godley
Assistant Secretary
for Fossil Energy



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United States Senate

COMMITTEE ON APPROPRIATIONS

WASHINGTON, D.C. 20510-6025

J. KEITH KENNEDY, STAFF DIRECTOR
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March 22, 1995

Dr. John Sims
 Vice-President Marketing
 Usibelli Coal Mine, Inc.
 122 1st Avenue
 Suite 302
 Fairbanks, Alaska 99701

Dear John:

Enclosed are copies of letters I received from the Maritime Administration (MARAD) and the State Department in response to my inquiries on your behalf regarding the inclusion of coal in the International Maritime Organization Hazardous and Noxious Substance Convention. It appears that MARAD is aware that the NCA/CEA rejects the separate account approach.

I hope you find this information useful.

With best wishes,

Cordially,



TED STEVENS



U.S. Department
of Transportation

Maritime
Administration

Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

1995 MAR 1 4:29

03 MAR 1995

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510-6025

Dear Senator Stevens:

Thank you for bringing to my attention the concerns of your constituent, Dr. John Sims, Vice President Marketing, Usibelli Coal Mine, Inc., with respect to the proposed inclusion of coal in the International Maritime Organization's (IMO) International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention).

We expect the issue on whether coal will be included in the HNS Convention will be considered at the next session of the IMO's Legal Committee, to be held in London from April 3-7, 1995. In preparation for this London session, there is scheduled a Shipping Coordinating Committee (SHC) meeting on March 16, 1995, from 1:00 p.m. to 3:00 p.m., at Coast Guard Headquarters, Room 2415, 2100 Second Street, S.W., Washington, D.C. The United States is still developing its position on this issue and the purpose of the SHC meeting is to solicit public comment on the various issues set for discussion at the Legal Committee session. The overall goal of the United States is to encourage an HNS Convention which is comprehensive and ensures predictability in collection of damage claims and includes a reasonable level of maximum liability faced by defendant shipowners and cargo interests. With numerous varieties of liability laws among the many maritime countries, the international forum can often provide consistency and stability.

There are pros and cons to including coal in the HNS Convention. Those who argue for including coal maintain that coal can be considered a hazardous substance on board vessels because of a history of safety problems (injuries and loss of life and damage to property). On the other hand, some, like your constituent, argue that coal should be excluded because of economic and scientific considerations, such as the large amount of coal exported and that coal is not a "noxious and hazardous" substance, or at least it is not as dangerous as other HNS substances. With special reference to the General Fund/sector approach, discussed in detail in the October 6, 1994 National Coal Association/Coal Exporters Association of the United States

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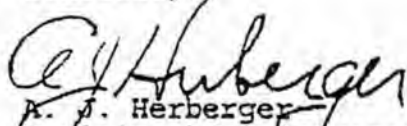
(NCA/CEA) joint letter, the industry has stated that it is unfair for coal to "cross-subsidize" damages which may be caused by more hazardous materials grouped within the high volume/low hazard definition, e.g., ammonium nitrate.

A possible middle ground is to have coal included in the HNS Convention but treated in a separate category, called a Special Account. This would mean that each industry covered by a Separate Account would be a "self insurer," i.e., it would not contribute to or be covered by the General Fund but, instead, would be responsible for paying claims that exceed the carrier's insurance liability limits when incidents occur involving the industry's product. Separate Accounts will not be finally determined until a scheduled 1996 Diplomatic Conference.

It is our understanding the NCA/CEA rejects the Separate Account approach and prefers coal not be included in any liability regime covering claims for loss of life, personal injury or property damage stemming from HNS incidents. My staff has invited representatives of the NCA/CEA to brief them on the coal associations' views regarding the HNS Convention. I assure you that the Maritime Administration will work to achieve a reasonable and fair solution to this issue.

As you know, the Coast Guard is the lead agency for IMO issues and you may wish to contact them for further information.

Sincerely,


A. J. Herberger
Maritime Administrator

cc: Admiral Robert E. Kramek, USCG
Commandant, U.S. Coast Guard



United States Department of State

Washington, D.C. 20520

1995 MAR 16 PM 4:27

MAR 14 1995

Dear Senator Stevens:

We are pleased to provide the following information in response to your letter regarding the concern of your constituent, John Sims, about the inclusion of coal in the draft International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) being developed under the auspices of the International Maritime Organization (IMO). Your letter and that of Mr. Sims will be shared with members of the U.S. interagency working group on the HNS Convention and will be given careful consideration.

The basic purpose of the draft HNS Convention is to establish liability and provide compensation to victims of accidents involving hazardous and dangerous cargo transported by sea. The draft Convention sets up two tiers of liability and compensation. The first tier establishes the limit of ship owner liability. The second tier provides for an international fund to pay compensation up to an overall Convention limit (not yet determined) in the event damages exceed the shipowner's limit or the shipowner is unable to pay. The international fund will be financed by fees paid by importers or receivers of HNS in a contracting state. Substances are included within the definition of HNS, *inter alia*, by virtue of their appearance on other IMO codes of dangerous or hazardous materials. As currently structured, coal is included as an HNS substance because it appears on a list of "solid bulk materials possessing chemical hazards".

Recently, there has been some strong sentiment favoring the exclusion of coal from the HNS Convention. The main concerns underlying this view focus on the perceived inequities to the coal industry and major coal importers, and the resulting economic effects of including coal in the HNS Convention. Specifically, it has been argued that because contributions to the international fund will be calculated, in part, on annual tonnage received, large coal receivers or importers would pay a disproportionate share of contributions relative to the risk of personal injury or damage to the environment posed by coal

The Honorable
Ted Stevens,
United States Senate.

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accidents. Because coal accounts for such a large volume and tonnage compared to other HNS cargoes, in effect, coal industry receipts would be subsidizing other more hazardous HNS industries. Moreover, some argue that coal presents such a minimal risk to the marine environment that it should be excluded altogether from the HNS Convention.

On the other hand, others argue that while the environmental risks posed by coal may not be significant, coal should be included in the Convention because it poses some safety risks through fire, spontaneous combustion, or explosion. This is important because the draft HNS Convention covers personal injury and death and property damage, not just environmental or pollution damage. Moreover, some maintain that the exclusion of coal could undermine the fundamental structure of the Convention. Specifically, it is argued that many other substances that are defined as "HNS" by the Convention could make similar, or better, claims than coal for exclusion on scientific or safety grounds. Excluding coal could require a review of all HNS substances on a singular and individual basis for their respective hazards in comparison to coal. As the HNS list is very long this would be a burdensome task, especially if the scheduled 1996 diplomatic conference on the HNS Convention is to become a reality.

Other methods of reducing or eliminating the potential inequity to the coal industry and receivers without excluding coal completely from the HNS Convention are being considered. These include a so-called "separate account" procedure under which the coal industry and receivers would pay only minimal administrative costs if transporters maintain a good safety record.

During the past few months the interagency working group on HNS has focused heavily on the question of whether coal should be included in the HNS Convention but has not yet taken an official position. The Coast Guard has also been in contact with the National Mining Association, the Coal Exporters Association, and other countries considering this issue and has shared their views with the group. We continue to debate this important issue and are carefully reviewing all options. We expect that this issue will be discussed at the next session of Legal Committee of the International Maritime Organization (IMO), to be held in London from April 3-7, 1995.

In preparation for this IMO meeting, a Shipping Coordination Committee (SHC) meeting will be held on March 16, 1995, from 1:00 p.m. until 3:00 p.m., at Coast Guard

Headquarters, Room 2415, 2100 Second Street, SW, Washington D.C. The purpose of the SHC meeting is to solicit public comment on the various issues set for discussion before IMO Legal Committee to assist the U.S. Delegation in preparing its official negotiating positions. Please inform your constituent that he is invited to attend. If he cannot he may provide comments to Commander Steve Poulin at (202) 267-0094 or fax: (202) 267-4496.

I hope this information is helpful in responding to your constituent's concerns. If you need further assistance on this or any other matter, please let us know.

Sincerely,

Wendy R. Sherman

Wendy R. Sherman
Assistant Secretary
Legislative Affairs

President: R. B. Stiles
711 H Street, Suite 600
Anchorage, Alaska 99501
Tel. (907) 276-6868
Fax. (907) 276-2395



ALASKA COAL ASSOCIATION

Secretary: Charles P. Boddy
122 First Avenue, Suite 302
Fairbanks, Alaska 99701
Tel. (907) 452-2625
Fax. (907) 451-6543

THE ALASKA COAL ASSOCIATION SUPPORTS HOUSE RESOLUTION NO. 7

House Resolution No. 7 urges the U.S. Senate to not ratify an International Maritime Organization (IMO) convention which would designate coal as a hazardous and noxious material.

Designation of coal by the IMO as a hazardous and noxious material would have the net effect of placing coal in a pool of materials against which an additional handling fee per unit of weight is assessed by the IMO each time the coal is loaded onto or unloaded from a vessel. The proceeds from these fees would be used to cover the cost of marine spills of these materials in excess of insurance limits.

The Alaska Coal Association strongly opposes the designation of coal as a hazardous and noxious material for the following reasons:

- Coal spills in the marine environment present no hazard to marine flora and fauna and the cleanup of such spills have never exceeded the insurance limits for such spills.
- Such a designation would arbitrarily place coal in a pool with other materials, which materials, if spilled in the marine environment, may represent a hazard to the marine environment and the spills may be very costly to cleanup.
- The U.S. Coast Guard places no such designation on coal because coal spills are not hazardous to the environment. Imposition of this hazardous and noxious designation by an United Nations (the IMO) Organization is clearly overreaching.
- The fees assessed against coal would increase the costs to the coal/energy consumer without providing any additional benefit to anyone or to the environment.

Designation of coal by the IMO as a hazardous and noxious material is clearly an attempt to address a non-problem and such a designation is opposed by coal producers, shippers and users throughout the world.

The Alaska Coal Association greatly appreciates the Alaska Legislature taking a strong stand in opposition to an arbitrary and unwarranted action by the IMO.

Alaska State Legislature

Chairman - Economic Development Committee

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716 W. 4th Ave.
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State Capitol
Juneau, AK 99801-1182
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REPRESENTATIVE
JERRY SANDERS
District 19

Official Business

COMMITTEES
Labor and Commerce
Transportation

March 21, 1995

Representative Joe Green Chair
House Resources Committee,
State Capitol, Room 24
Juneau, Alaska 99801

Dear Representative Green:

I respectfully submit this request for hearing on HR 7, "A resolution opposing a proposed international convention classifying coal as a hazardous and noxious material."

Your consideration of the request is appreciated

Sincerely,



Representative Jerry Sanders, Chair
House Special Committee On Economic Development