

SCOMM

#46:27

Introduced: 2/17/86
Referred: House Special Committee on
Oil & Gas and Resources

1 IN THE HOUSE

BY HERRMANN AND ADAMS

2

HOUSE BILL NO. 628

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to certain oil terminal operators."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 46.04.050 is amended by adding a new subsection to
9 read:

10 (b) AS 46.04.040 does not apply to an electric cooperative
11 incorporated under AS 10.25 that operates an oil terminal facility
12 under this chapter.

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.



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



**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



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

CORROON & BLACK/DAWSON & CO., INC.

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

David Hutchens
February 6, 1986
Page 3

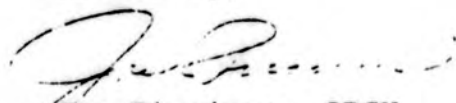
CORROON & BLACK/DAWSON & CO., INC.

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

Sec. 46.04.040. Proof of financial responsibility. (a) A person may not cause or permit the operation of an oil terminal facility in the state unless he has furnished proof of financial ability to respond in damages which has been accepted by the department. Ability to respond in damages need not exceed \$50,000,000 but must be in an amount (1) not less than \$10, per incident, for each barrel of storage capacity at the oil terminal facility; or (2) \$1,000,000, whichever is greater.

(b) After July 1, 1981, a person may not cause or permit the operation of an offshore exploration or production facility in the state unless proof of financial ability to respond in damages has been accepted by the department. Proof of financial responsibility may not be less than \$35,000,000 per incident.

(c) A person may not cause or permit the transfer of oil to or from a tank vessel, or, after January 1, 1981, to or from an oil barge, unless proof of financial responsibility for the tank vessel or barge has been accepted by the department. Financial responsibility under this subsection shall be in the following amounts:

(1) for a tank vessel or oil barge involved in the transportation of trans-Alaska pipeline oil, the amount required by the Federal Maritime Commission under sec. 204(c)(3) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. sec. 1653(c)(3));

(2) for any other oil barge, the amount required by sec. 311(p)(1) of the Clean Water Act, or \$1,000,000, whichever is greater;

(3) for any other tank vessels, the amount required by sec. 311(p)(1) of the Clean Water Act, or \$20,000,000, whichever is greater.

(d) Except for prosecutions under AS 46.03.790(b), it is not a defense to an action brought for violation of (c) of this section that the person charged believed in good faith that the vessel operator possessed proof of financial responsibility accepted by the department.

(e) Financial responsibility may be demonstrated by self-insurance, insurance, surety, or guarantee, under terms the department may prescribe. An action brought under AS 46.03.758, 46.03.760(a) or (e), or 46.03.822 may be brought in a state court directly against the insurer or another person providing evidence of financial responsibility. The applicant, and an insurer, surety, or guarantor 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.

(f) Acceptance of proof of financial responsibility expires

(1) one year from its issuance for self-insurance;

(2) on the effective date of a change in the surety bond, guarantee, or insurance agreement; or

(3) on the expiration or cancellation of the surety bond, guarantee, or insurance agreement.

(g) The person whose proof of financial responsibility is accepted by the department under this section shall notify the department at least 30 days before the effective date of a change, expiration or cancellation in the surety bond, guarantee, or insurance agreement. Application for renewal of acceptance of proof of financial responsibility under this section must be filed at least 30 days before the date of expiration

(h) The department, after notice and hearing, may revoke acceptance of proof of financial responsibility if it determines that

(1) acceptance was procured by fraud or misrepresentation; or

(2) a change of circumstance has occurred other than a change specified in (f)(1) — (3) of this section, which would have warranted denial of the application.

(i) Financial responsibility under this section extends to a loss compensable under AS 46.03.760(e) or 46.03.822 and an assessment under AS 46.03.758 or 46.03.760(a). (§ 2 ch 116 SLA 1980; §§ 117, 118 ch 59 SLA 1982)

Sec. 46.04.050. Exemptions. Because of the restricted nature of the operations and the minimal danger to the environment posed by the activities, AS 46.04.030, 46.04.040 and 46.04.060 do not apply to an oil terminal facility that has an effective storage capacity of less than 10,000 barrels of oil. (§ 2 ch 116 SLA 1980)

Sec. 46.04.060. Inspections. Oil terminal facilities, offshore exploration and production facilities, tank vessels, and oil barges are subject to inspection by the department to ensure compliance with the provisions of this chapter. (§ 2 ch 116 SLA 1980)

Sec. 46.04.070. Scope of regulations. The department shall adopt regulations which are necessary to carry out the purposes of this chapter and which do not conflict with and are not preempted by federal law or regulations. (§ 2 ch 116 SLA 1980)