

MAINE STATE LEGISLATURE

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REPORT OF THE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON OIL SPILL
LIABILITY INSURANCE

December 1980

COMMITTEE MEMBERS

Senate

Sen. James McBreairty
Sen. Howard Trotzky
Sen. Donald O'Leary

House

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Rep. Donald M. Hall
Rep. Andrew J. Doukas
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SUBCOMMITTEE MEMBERS

Senate

Sen. Howard M. Trotzky

House

Rep. William B. Blodgett
Rep. Donald M. Hall
Rep. Bernard H. Austin
Rep. F. Jacques

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STATE OF MAINE

ONE HUNDRED AND NINTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

December 18, 1980

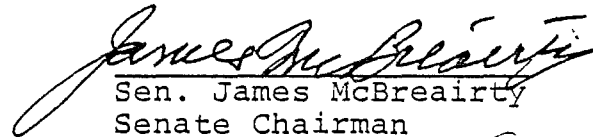
Legislative Council
110th Legislature
State House
Augusta, Maine 04333

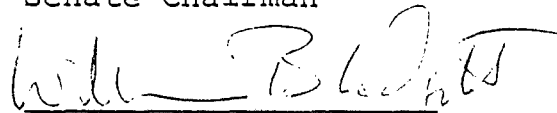
Re: Petroleum Handlers Liability Insurance Study

Dear Sirs:

In accordance with H.P. 2043, an order directing the Committee to study petroleum handlers liability insurance, we enclose the final report of the Committee.

Sincerely,


Sen. James McBreaarty
Senate Chairman


Rep. William Blodgett
House Chairman



In its Second Regular Session, the 109th Legislature considered a bill entitled "AN ACT to Establish \$10,000,000 as the Limit of the Maine Coastal Protection Fund." During discussions of the bill, certain oil handlers suggested that there is a troubling problem with the Coastal Protection Fund - the lack of insurance coverage to provide prompt compensation for damage claims in the event of a major oil spill. Such a major spill might exceed the revenue available in the Fund and other sources. The same oil handlers said that individual coverage was either not available, or prohibitively expensive, but that a group policy for all oil terminal licensees might be feasible. The Legislature, through HP 2043 (Appendix A) directed the Joint Standing Committee on Energy and Natural Resources to study this issue.

The Study Order contained the following charge to the Committee:

1. Study petroleum handlers' liability insurance, determining what types of insurance is available and carried by handlers;
2. Determine whether group insurance for terminal operators is available;
3. Review the adequacy of the Maine Coastal Protection Fund, and determine whether it would be in the interests of the State to administer group liability insurance through the fund.

The Committee held 2 meetings, one organizational, and the other to receive testimony from all interested parties. An invitation to attend the second meeting or submit comments was

sent to all petroleum handlers in the State. Representatives of four firms actually attended the meeting.

II

To determine the availability of insurance in the marketplace, the Committee sought to determine the types and extent (if any) of insurance actually carried by handlers in the State at this time.

The Committee, with help of interested parties, prepared a questionnaire to determine extent and type of insurance carried. See Appendix B.

The Department of Environmental Protection suggested 17 handlers to whom the questionnaire should be sent, based on volume and type of oil handled.

Thirteen responses were received. The results are contained in Appendix C.

Summary of results

While the quality of the responses varied greatly among the respondents, the evidence demonstrated that insurance adequate to meet the requirements imposed by the Maine Coastal Conveyance Act is available in the private insurance marketplace. Of all handlers surveyed (responses numbering 13) only 2 expressed a problem in obtaining insurance.

These 2 respondents are among the largest dealers in "black oil" in the State, which is the type of oil that (1) does the most damage in a spill and (2) requires the greatest amount of resources (time, money, manpower) to effectively clean up.

While the Committee did not involve itself with insurance

pricing structures^{1/}, the evidence presented points to the conclusion that insurance coverage sufficient to adequately cover the risks imposed by the Coastal Conveyance Act is available to all, but may only be available to handlers of black oil at a premium price in excess of that paid by handlers of primarily lighter grade oil.

III

The Committee has determined that a type of group insurance for terminal operators is available through fund purchased insurance. One firm offered this policy at a premium price of \$235,000/year. Liability limits were \$45 mil per occurrence. See Appendix D for proposal.

IV

The Committee concludes that group liability insurance administered through the Coastal Protection Fund is not in the interest of the State at this time. This is based on:

1. The judgment by the Department of Environmental Protection that the fund could not afford purchasing a group liability policy, given its in-house priority to build a waste management facility. See DEP memo, Appendix E for Department position; and

2. The small number of handlers expressing concern, which demonstrates to the Committee that the proposal to finance the

^{1/} Indeed, pricing is an area which is treated as confidential among both insureds and insurers.

the purchase of insurance by the Coastal Protection Fund through assessment of an additional surcharge based on the volume of oil transferred in the State has insufficient support at this time.

V

In closing, the Committee does recognize that there is some risk that damages resulting from an oil spill may go uncompensated in certain circumstances:

1. The AMOCO CADIZ foundered off the coast of France in 1978, resulting in an oil spill that cost \$60 million to clean up, and almost \$2 billion in damage claims. If a similar spill occurred in Maine, a handler with \$50-100 million in coverage could be responsible for paying the excess out of its own available funds. The issue would then center around the sufficiency of the firm's assets, and whether those assets were readily available for liquidation.

2. The existence of two handlers who express problems obtaining affordable coverage in the private insurance market further accentuates this problem. These firms are "unwillingly" self insuring a much greater portion of the risk than those companies which do have private coverage. In a larger spill involving one of these handlers, the sufficiency of assets issue would surface earlier, and be more pronounced. However, it is the Committee's judgment, after weighing all factors mentioned herein, that there is insufficient support for any specific piece of legislation to solve this limited problem. The Committee views this as more of an internal problem relating to

the costs of doing business in the State, rather than a problem requiring a legislative solution.

The Committee suggests that the various interested handlers in the State who deal primarily in black oil explore the possibility of purchasing a group policy in the private marketplace.

S. R.
D. OF R.

STATE OF MAINE

In House

XXXXXX
XXXXXX
XXXXXX

Whereas, the Legislature finds that transfer of petroleum products can be hazardous, and that spills and discharges of petroleum products can cause great damage to property and the environment; and

Whereas, the Maine Coastal Protection Fund was established to provide a fund for the rapid removal of petroleum spills and payment of 3rd party damage claims; and

Whereas, petroleum handlers are held strictly and vicariously liable for all acts relating to the transfer of petroleum with no limit; and

Whereas, this unlimited vicarious liability makes it difficult for some petroleum handlers to obtain liability insurance, thereby undermining the protection of the Maine Coastal Protection Fund; now, therefore, be it

Ordered, the Senate concurring, subject to the Legislative Council's review and determinations hereinafter provided, that the Joint Standing Committee on Energy and Natural Resources shall study petroleum handler's liability insurance, determine what types of insurance are available and carried by handlers and determine whether group insurance for terminal operators and other handlers is available; and be it further

Ordered, that the committee shall review the adequacy of the Maine Coastal Protection Fund, and whether it would be in the interests of the State to administer group liability insurance through the fund; and be it further

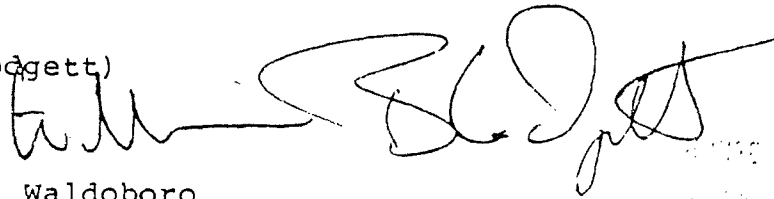
Ordered, that the committee report its findings and recommendations, together with all necessary implementing legislation in accordance with the Joint Rules, to the Legislative Council for submission in final form at the First Regular Session of the 110th Legislature; and be it further

Ordered, that the Legislative Council, before implementing this study and determining an appropriate level of funding, shall first ensure that this directive can be accomplished within the limits of available resources, that it is combined with other initiatives similar in scope to avoid duplication and that its purposes are within the best interests of the State; and be it further

Ordered, upon passage in concurrence, that a suitable copy of this Order shall be forwarded to members of the committee.

(Blodgett)

NAME:



TOWN: Waldoboro

H.P. 2043

Read

HOUSE OF REPRESENTATIVES

James Mitchell
Waldoboro

MAR 26 1980

Passage
Unassigned



SENATE

JAMES McBREAIRTY, ARDOSTOCK COUNTY, SENATE CHAIRMAN
 HOWARD M. TROTZKY, PENOBSCOT COUNTY
 DONALD R. O'LEARY, OXFORD COUNTY

PHYLLIS B. DAMBORG, COMMITTEE CLERK
 JOHN BAILEY, LEGISLATIVE ASSISTANT



STATE OF MAINE

ONE HUNDRED AND NINTH LEGISLATURE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

APPENDIX B

HOUSE

WILLIAM B. BLODGETT, WALDOBORO, HOUSE CHAIRMAN
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 LAURENCE L. KIESMAN, FRYEBURG
 ANDREW J. DOUKAS, PORTLAND
 PAUL F. JACQUES, WATERVILLE
 JOHN M. MICHAEL, AUBURN
 BERNARD H. AUSTIN, BINGHAM

During the Second Regular Session of the 109th, the Maine Legislature passed H.P. 2043, requiring the Joint Standing Committee on Energy and Natural Resources to study petroleum handler's liability insurance, and specifically to determine what types of insurance are available and carried by handlers.

Over the past 2 years, the committee has been made aware of possible gaps between existing insurance coverage and the Maine Coastal Conveyance Act, which imposes liability on a very broad range of acts and omissions. With this in mind and to implement the study order, the Joint Standing Committee on Energy and Natural Resources created a Subcommittee on Oil Spill Liability Insurance. As you know, this subcommittee met on July 24, 1980, to consider an appropriate course of action. We concluded that it was essential to ascertain the coverage presently maintained by the different terminals operating in the State.

To this end, we have prepared this short survey questionnaire. We hope you will take the small amount of time needed to complete it. The committee realizes that many times it is extremely difficult to ascertain the precise nature and extent of insurance coverage. Thus, we recommend that whenever needed, you consult with your insurance expert.

The committee does not intend to disclose any of the results of this survey to any person, firm, or corporation until the data is compiled in final form. Information will be generalized for the final report, which will not contain any references to specific companies or specific insurance coverage. Legislative working papers are not considered public records under 1 MRSA 401 et seq., the Freedom of Access statutes.



Thank you in advance for your cooperation. Your efforts will significantly assist us in making recommendations to the 110th Legislature on this difficult subject.

Sincerely,

William B. Blodgett
House Chairman

Enc.

Please answer the following questions and return to:

Ken Hovermale
Office of Legislative Assistants
Room 421, State House - Station 13
Augusta, Maine 04330

1. Do you presently carry an insurance policy with a licensed insurance carrier covering liability for oil spills occurring in the State of Maine? If Yes, please answer Questions 2-5, if No, please skip to Question 6.

2. What type of policy do you carry (i.e., general liability policy, a special policy intended to cover liability related to oil pollution, etc. If you are unsure of the extent or nature of your oil pollution coverage, please consult with your insurance agent or broker.

3. Does your policy cover all risks imposed by the Maine Coastal Conveyance Act? (38 MRSA §§541-559) (Below is a copy of the relevant portions of the act; following is a listing of its major components. Please have your insurance expert check them against the provisions of your policy, and mark each item as to whether or not you are covered.)

§552. Liabilities of licensees

1. Licensee shall be liable. A licensee shall be liable for all acts and omissions of its servants and agents, and carriers destined for the licensee's facilities from the time such carrier shall enter state waters until such time as the carrier shall leave state waters.

2. State need not plead or prove negligence. Because it is the intent of this subchapter to provide the means for rapid and effective clean-up and to minimize direct damages as well as indirect damages and the proliferation of 3rd party claims, any person, vessel, licensee, agent or servant, including carriers destined for or leaving a licensee's facility while within state waters, who permits or suffers a prohibited discharge or other polluting condition to take place shall be liable to the State of Maine for all disbursements made by it pursuant to section 551, subsection 5, paragraphs B, D and E, or other damage incurred by the State. In any suit to enforce claims of the State under this section, to establish liability, it shall not be necessary for the State to plead or prove negligence in any form or manner on the part of the person causing the discharge or licensee responsible for the discharge. The State need only plead and prove the fact of the prohibited discharge or other polluting condition and that the discharge occurred at facilities under the control of the person

causing the discharge or the licensee or was attributable to carriers or others for whom the licensee is responsible as provided in this subchapter.

INSURANCE COVERAGE	COVERED	NOT COVERED
1. Strict liability for <u>all</u> spills occurring in connection with your terminals		
2. Vicarious liability for acts or omissions of <u>vessels</u> going to or away from terminal		
3. Clean up costs (please specify limit of coverage)		
4. Direct third party damages (please specify limit of coverage)		
5. Indirect third party damages (please specify limit of coverage)		

4. What are the maximum liability limits of your policy for oil spills occurring in the State of Maine?

5. If available, please attach a copy of the relevant portions of your policy - specifically, those portions which specify the acts, or omissions which are covered, any exclusions from the policy, and limits of liability.

6. Do you self insure risks which Maine law subjects you to liability (see Question 3 for relevant portions of the Maine Act. Please check those provisions of which you are aware.)

APPENDIX C

Total number of respondents 13

I. Current coverage

A. Number of firms declaring at least partial coverage by private insurance carriers 8

Breakdown:

INCURANCE COVERAGE	# of Firms Covered by Private Ins. Carriers
1. Strict liability for <u>all</u> spills occurring in connection with your terminals	4
2. Vicarious liability for acts or omissions of <u>vessels</u> going to or away from terminal	5
3. Clean up costs	6
4. Indirect third party damages	5

LIABILITY LIMITS	# of Firms
1 mil	1
5 mil	1
40 mil	1
50-55 mil	3
100 mil	1
300 mil	1

B. Number of firms wholly self-insured 5

II. Number of firms expressing significant problems obtaining coverage 2

III. One firm expressed no significant problem with coverage or risk exposure but indicated that liability limits of its present coverage were 5 mil. with only 2 of the five major aspects of the risk the Act imposes being covered.



FRED. S. JAMES & CO. OF NEW YORK, INC.

STATE OF MAINE
PROPOSED MAINE COASTAL PROTECTION
FUND EXCESS INSURANCE POLICY
REVISED, AUGUST, 1979

PROPOSED MAINE COASTAL PROTECTION FUND EXCESS INSURANCE POLICY

Revised, August, 1979

INSURED:

Board of Environmental Protection of the State of Maine as provided by and limited to the legislation and inacted under the Oil Discharge Prevention and Pollution Act of October 1977, Title 38, Chapter 3, Section 541, Et seq. ("The Act") for the Maine Coastal Protection Fund, here and after referred as to the "Fund".

LIMIT OF LIABILITY:

1. \$45,000,000. any one occurrence, excess of all valid and collectible monies available to the Fund, including but not limited to monies from the vessels, from available Federal Funds, and if another state or country is involved, any funds or monies collectible from such other state or country, but excluding any monies from the licensee under the act based upon liabilities under Section 552 of the Act.
2. After all valid and collectible monies available, if any, as provided above, this insurance shall respond excess of \$5,000,000 any one occurrence, but if there are no such available valid and collectible monies, or if the spiller

is unknown, this insurance shall then respond in excess of \$5,000,000 any one occurrence.

3. The \$5,000,000 available under the Fund, any one occurrence, shall be deemed non-reducible, and this insurance shall always be excess of both other available funds as stated above and \$5,000,000.
4. Notwithstanding the above provisions, proceeds will be made available under this policy to the Assured for its removal activities under Section 548 of the Act in excess of available monies actually in the Fund at the time of the occurrence if the Assured reasonably concludes that the amounts that will become due to all persons under the Act with respect to such occurrence after such valid and collectible monies that will become available will exceed \$5,000,000. The Assured will reimburse to the Assurer as received by the Assured such valid and collectible monies received by Assured with respect to such occurrence up to the amount advance by the Assurer.

CONDITIONS:

This insurance covers the legal liability of or to persons as defined in the Act or enforced under the Act.

The foregoing coverage includes, but is not limited to, all cost of cleaning up discharges as defined in the Act, as well direct or indirect damages incurred by persons, to Real and Personal Property including Loss of Income for which recovery may be obtained under the Act.

In the event of a claim being represented against the Fund in excess of \$5,000,000 per occurrence by the State of Maine, for damage to its natural resources, there shall be created a Board of Arbitration for the purpose of determining the amount of said damages. The Board thus created shall be constituted in accordance with the provisions of the Act, Section 551, sub-paragraph 3, but the Assured agrees to consult with the Assurers before the formation of said Board. It is further agreed that the Assured will maintain consultation with the Assurers during negotiations and deliberations over said claim. In the event, of a claim being presented against the Fund by a party other than the State of Maine or any agency thereof, the Board of Arbitration shall be constituted in accordance with the provisions of the Act, Section 551, sub-paragraph 3, but the Assured agrees to consult with the Assurers before the formation of said Board. It is further agreed that the Assured will maintain consultation with Assurers during negotiations and deliberations over said claim.

Any material change in the number of facilities, activity, or exposure held covered hereunder will be included at an additional premium to be agreed.

These Assurers shall be subrogated to all the rights which the Assured may have against any person or entity in respect to any payment made under this policy to the extent of such payment, and the Assured shall, upon request of these Assurers, execute all documents necessary to secure these Assurers such rights, provided, however, that the Assures affirmatively agree, for benefit of the licensee under the Act, that they will not exercise any such rights against the licensees, which agreement shall be binding upon the Assurer, there successors and assigns. It is understood and agreed by the Assured that in any event of any occurrence which may result in a loss, damage and/or expense for which these Assurers are or maybe become liable under this policy, notice thereof shall be given to these Assurers as soon as practicable and further that any and every process, pleading, and paper of any kind relating to such occurrence will be forwarded promptly to these Assurers.

These Assurers agreee that any action or proceeding against them for the recovery of any claim under or by virtue of this

policy shall not be barred if commenced within the time prescribed thereto in the statutes of the State of Maine.

This insurance may be cancelled upon giving thirty days notice in writing for the event of non-payment of premium, unless said premium is paid within the thirty day period.

The terms and conditions of this form are to be regarded as substituted for those of the policy form to which is attached, the latter being hereby waived except provisions required by law to be inserted in this policy.

EXCLUSIONS:

1. This policy shall not respond for clean-up costs, damages, etc., for discharges arising out of an act of war, an act of government, either State, Federal, Municipal, except pursuant to Section 548 of the Act.
2. Administration expenses, personnel expenses, and capital equipment cost of Board of Department of Environmental Protection related to the enforcement of the Act, or sums allocated to research and development in the accordance with the Act.

NOTE:

All other terms and conditions remain unchanged. Where terms and conditions are unclear and/or not provided for in this policy, this policy shall be follow form to the Act, excess of \$5,000,000 any one occurrence and all valid and collectible monies as provided for in paragraph one, Limit of Liability section of this policy.

ANNUAL PREMIUM: \$235,000.

STATE OF MAINE

APPENDIX E

Inter-Departmental Memorandum Date June 5, 1980

To John Bailey, Legislative Assistant
Marc Guerin, Director *R/G m. j.*

Dept. Office of Legislative AssistantsFrom Division of Oil Conveyance ServicesDept. Department of Environmental ProtectionSubject Maine Coastal Protection Fund Insurance

I have put together a background summary of the work this Department did in examining whether the Maine Coastal Protection Fund should purchase insurance to extend or implement the benefits of the Fund as provided for in Title 38 MRSA § 550-5-F.

On May 30, 1978 the Maine Insurance Advisory Board (MIAB) was contacted by Commissioner Warren on behalf of the Board of Environmental Protection (BEP).

The goals of the Department were laid out to the MIAB in the form of specifications. The following is a brief explanation of the four main points:

1. Insurance should be for any spill anywhere out to the 12 mile limit.
2. Insurance should be for clean up, third party damages, plus damages to state's own natural resources.
3. We wanted quotes for six different combinations of limits and deductibles. The quotes requested were:

- a. 50 million dollar limit

- b. 30 million dollar limit

for each 4 million deductible, 6 million deductible, and 10 million deductible.

4. Insurance policy includes a statement whereby the insurance company would not be able to subrogate its rights to recover vicariously against licensees, but that the State would be prepared to subrogate its right to proceed against a spillor without having to prove fault.

An in-house committee was formed to follow the progress of the proposed insurance purchase. The members of the committee are: Henry Warren, Steve Groves, Cab Howard, Henry Mann, and Marc Guerin.

It was the unanimous conclusion of the committee that the State of Maine Department of Environmental Protection through the authority of the Coastal Conveyance Act can definitely purchase Fund insurance which meets all of the original specifications. However, the committee notes that as of August 30, 1979 there had been no language developed that had been totally acceptable to the MIAB, the DEP committee, or the insurance company.

The policy, if purchased, would extend the cash value of the Fund to 50 million dollars (in the event it became necessary to do so) which includes a 5 million dollar deductible provision, in the event of a catastrophic spill. The dollars would be available for damages as well as clean up costs.

In this matter the MIAB contacted representatives of many of the world's largest insurance markets. In many ways, development of this policy was a unique experience to MIAB as there are no known policies of this type anywhere in the world today, nor are there many states which place the kind of liability on the terminals as there is in Maine.

In the course of this project MIAB received two proposals and thus two bids. Until the involvement of Fred S. James and Company of New York, Inc. (James Company), the MIAB and DEP had not received any proposals that were interesting enough to pursue in detail primarily due to annual premium costs equal to or in excess of historical yearly income of the Fund.

However, James Company had proposed an acceptable conceptual insurance policy at a premium of \$235,000.00 for the first year (no guarantee for subsequent years). The uncertainty of the future annual premium also was a concern to the committee.

This August 1979 proposal was reviewed in-house and was distributed to all our licensees for their review and comment. In all, the Department received eleven responses. Most companies chose the non-committal response (neither positive nor negative), a couple adamantly opposed it, and only one wanted us to purchase it as proposed.

Staff believes that many of the problems identified by the licensees reflect either (1) lack of understanding of what we were trying to do because of incomplete explanation provided by this Division as provided by myself or (2) a problem with getting the policy to the correct individual within their corporate structure.

Again, in all, there was only one positive response from the industry. It is duly noted at this point that if the State of Maine purchased this policy, the industry would not be able to reduce any of their existing insurance. Obviously, the industry, and particularly the majors, saw little value in what most likely seemed to them to be an unnecessary Fund expenditure if it did not do anything for them.

All committee members agreed that, in concept, we could have purchased the insurance and if the issue were merely to decide whether or not to purchase the insurance based on its merits, the committee's final recommendation would have had to emerge from a complete detailed examination of the wording of the policy weighed against the level of risk the State has of a major spill when considered against the present "insurance" coverage of the 6 million dollar Coastal Protection Fund.

Rather than go into detail on the specific merits of the policy, I would point out that this policy follows the provisions of the Coastal Conveyance Act with very little exception.

The most overriding concern identified by the committee, however, remained cost.

At the present low level of ship traffic in the state, the MCPF revenue has been steadily on the decline and should continue to do so for the next few years. (Note: DEP has no way of verifying this latter statement but can make an educated judgement that this would be the case.)

To maintain a 24 hour/day, 7 day/week response capability statewide, the Fund's expenditures remain almost constant (plus inflation) regardless of Fund income.

John Bailey, Legislative Assistant
Office of Legislative Assistants
June 5, 1980 - Page 3

For the past two years the BEP has been searching for a statewide oil spill debris management concept encompassing the last two annual research projects. The committee had made the assumption that the BEP shall make the financial commitment (possibly totaling 2 to 2.5 million dollars to lease, develop and operate initially) to make the waste management facilities a reality.

These latter statements reflect a priority evaluation made by the in-house committee which resulted in the following recommendation.

Recommendation - It was the unanimous decision of the in-house committee to advise the BEP not to pursue this matter any further. However, the committee asked the BEP to continue to maintain its interest in this insurance concept at least until after all the financial commitments are made on our waste management facilities.

If followed, this recommendation would allow the BEP to discontinue actual pursuit of the James Company proposal at this time due to the Fund's uncertain financial picture while recognizing that the proposal does warrant further consideration if our financial posture improves.

In a nutshell, it was assumed that waste management solutions are much more critical to an effective spill control program (and save a lot of money also should a catastrophic spill occur in the near future) than this insurance policy.

In the committee's judgement the BEP could afford one or the other, but not both at this time.

I recommend that you seek out the advice and experience of the Maine Insurance Advisory Board and in particular Mr. Don Wills who did a very good job for us on this item.

I'm enclosing some items from my file that you could find useful. I stand ready to help you in any way on this matter.

Please advise Milt Huntington of the Maine Petroleum Association (Augusta) of any action or public meetings which may take place on this subject.

Thank you.

MG/h

Enc.

cc: Steve Groves
Henry Mann