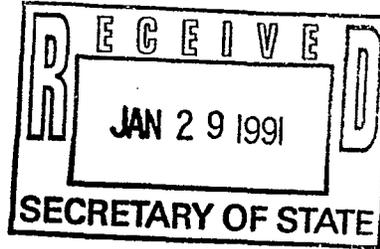


CR 90-126



RECEIVED

JAN 31 1991

4:00 pm
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
OFFICE OF THE COMMISSIONER OF INSURANCE)

I, Robert D. Haase, Commissioner of Insurance and custodian of the official records of this Office, certify that the attached rule-making order affecting s. Ins 6.35, relating to defining liabilities excluded from coverage in liability insurance policies for bodily injury and property damage for the purpose of specifying costs that are ineligible for reimbursement from the Petroleum Storage Environmental Cleanup Fund, was issued by this Office on January 29, 1991.

I further certify that I have compared this copy with the original on file in this Office and that it is a true copy of the whole of the original.

Dated at Madison, Wisconsin, this 29th day of January, 1991.

Robert D. Haase
Commissioner of Insurance

18015T

5-1-91

RECEIVED

JAN 31 1991

Revisor of Statutes
Bureau

ORDER OF THE COMMISSIONER OF INSURANCE

CREATING A RULE

To create Ins 6.35, relating to defining liabilities excluded from coverage in liability insurance policies for bodily injury and property damage for the purpose of specifying costs that are ineligible for reimbursement from the petroleum storage environmental cleanup fund.

ANALYSIS BY THE OFFICE OF THE COMMISSIONER OF INSURANCE

Statutory authority: ss. 101.143 (1m) and 601.41 (3), Stats.

Statutes interpreted: s. 101.143 (1) (ad) and (gm) and (4) (b) 15, Stats.

The petroleum storage environmental cleanup fund (fund) is a state fund, financed by petroleum inspection fees and administered by the department of industry, labor and human relations (DILHR). From the fund, DILHR pays awards to reimburse an owner or operator of an underground petroleum products storage tank system or a person who owns a home heating oil tank system for certain costs which are an integral part of the cleanup of a discharge of petroleum products from such a system. The cleanup costs which are eligible for reimbursement are specified in the statute.

1989 Wisconsin Act 31 added a provision authorizing DILHR, in addition to its authority to pay eligible cleanup costs, to reimburse the owner or operator of an underground petroleum product storage tank system, but not a person who owns a home heating oil tank system, for compensation paid by the owner or operator to a 3rd party for bodily injury and property damage caused by a petroleum products discharge. An owner or operator may not be reimbursed for compensation paid to a 3rd party for any liabilities excluded from coverage in liability insurance policies for bodily injury or property damage. These excluded liabilities are not specified in the statute. However, the legislation requires the commissioner of insurance to define by rule what these excluded liabilities are, consistent with standard insurance industry practice.

This rule creates the required definitions, based on exclusions common to commercial general liability insurance policies and policies that provide coverage for pollution liability.

SECTION 1. Ins 6.35 is created to read:

INS 6.35 PETROLEUM STORAGE ENVIRONMENTAL CLEANUP FUND; EXCLUSIONS FROM REIMBURSEMENT. (1) PURPOSE. This section interprets s. 101.143 (1) (ad) and (gm) and (4) (b) 15, Stats., by defining the liabilities that are excluded from coverage in liability insurance policies for bodily injury and property damage for the purpose of specifying costs paid by an owner or operator to a 3rd party which are ineligible for reimbursement from the fund.

(2) DEFINITIONS. In this section:

(a) "Discharge" has the meaning given in s. 144.76 (1) (a), Stats.

(b) "Fund" means the petroleum storage environmental cleanup fund under s. 20.445 (1) (v), Stats.

(c) "Operator" has the meaning given in s. 101.143 (1) (d), Stats.

(d) "Owner" has the meaning given in s. 101.143 (1) (e), Stats.

(e) "Petroleum product storage system" has the meaning given in s. 101.143 (1) (fg), Stats.

(3) EXCLUSIONS. In addition to the exclusions specified in s. 101.143 (4) (c), Stats., and the claims which shall be denied under s. 101.143 (4) (g), Stats., an owner or operator is not eligible for reimbursement under s. 101.143 (4) (b) 15, Stats., for compensation paid by the owner or operator to a 3rd party for any of the following:

(a) Costs for which the owner or operator is not legally liable.

(b) Bodily injury or property damage arising out of any of the following:

1. A discharge expected or intended from the standpoint of the owner or operator.

2. A discharge based on or attributable to a criminal act by the owner or operator.

3. The owner's or operator's intentional, wilful or deliberate noncompliance with any statute or administrative rule administered by the department of industry, labor and human relations or the department of natural resources which directly relates to the storage and handling of flammable liquid or combustible liquid, as defined by the department of industry, labor and human relations by rule.

4. The owner's or operator's assumption of the liability of a 3rd party under a contact or agreement, unless the owner or operator would have had the liability in the absence of the contract or agreement.

5. The ownership, maintenance, use, operation or entrustment to another person of an automobile, aircraft, watercraft or rolling stock belonging to the owner or operator, except that this exclusion does not apply if the bodily injury or property damage is caused by the use of the automobile, aircraft, watercraft or rolling stock during the loading or unloading of the owner's or operator's petroleum products storage system.

6. War, invasion, act of a foreign enemy, hostilities, civil war, rebellion, revolution, insurrection, military or usurped power, strike, riot or civil commotion.

(c) Bodily injury to any of the following, whether the owner or operator is liable as an employer or in any other capacity, and regardless of whether the owner or operator is obligated to share damages with or to repay someone else who must pay damages because of the bodily injury:

1. An employe of the owner or operator for an injury occurring during and in the course of the employment.

2. The spouse, child, parent, brother or sister of an employe of the owner or operator arising as a consequence of the bodily injury to the employe under subd. 1.

(d) Property damage to any of the following:

1. Property owned or occupied by or rented or lent to the owner or operator.

2. Personal property in the care, custody or control of the owner or operator.

(e) An obligation of the owner or operator under a workers' compensation, disability benefits, unemployment compensation or other similar law.

(f) Punitive or exemplary damages.

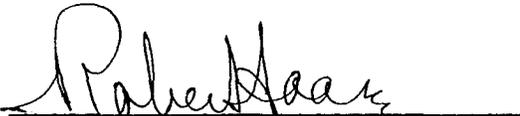
(g) Federal, state or local fines, forfeitures or other penalties.

(h) Amounts recoverable by the owner or operator under s. 101.143 (4)

(b) 1 to 14, or by a 3rd party as a claimant under s. 101.143, Stats.

SECTION 2. EFFECTIVE DATE. This rule takes effect on the first day of the month beginning after publication, as provided in s. 227.22 (2) (intro.), Stats.

Dated at Madison, Wisconsin this 29th day of January, 1991.


Robert D. Haase
Commissioner of Insurance

RECEIVED
JAN 31 1991
Revisor of Statutes
Bureau