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MEMO

To: Public Utilities Commission

From: Glenda Blindert

Date: 9/5/2023

RE: **pipeline insurance coverage questions**

We have been asked by several of our insureds about their liability exposure and any potential coverage if the carbon pipeline is on their property. We have checked with all of our farm companies on the concerns of a pipeline crossing an insured's premises.

One question received, would there be coverage for your cattle if they would die due to leak. Regular farm insurance policies would not cover this. The owner of the cattle would need to buy all risk mortality insurance. They would be required to insure the whole herd as we couldn't specifically identify which cow or bull would die from this. For example, \$300,000 livestock herd value, the cost would be about \$1018.50/year based on current rates. That would be 150 cows @ \$2000 each. This would cover leakage of gas or suffocation as the current forms read. It would need to be determined if a leakage from the carbon pipeline meets this covered peril.

Most farm insurance policies would cover fire or explosion if the pipeline would explode and damage covered farm buildings. If the cause of the damage was fire or explosion, your insurance company would pay for damaged buildings but would try to subrogate back to the owner of the pipeline if that was the cause of the damage. Some farm policies offer very limited pollution coverage, but it's not determined if CO2 is considered a pollutant. **Please see the attached form that the insurance companies are adding to their farm policies to limit their exposure from pipelines. Wells Liability Exclusion It is my understanding that some farm liability companies have gone so far as cancelling policies if the carbon pipeline is on their property. There isn't a farm insurance company that wants to pick up any potential liability exposure from the carbon pipelines, including potential defense costs if there is a problem.**

Farm liability coverage won't cover the landowner if the neighbor or anyone tries to say that the pipeline on your property did harm to their cattle, property or did bodily injury to anyone. If someone were to accidentally cut a pipeline, just like a utility line crossing your property, then your farm liability would probably cover the cost to repair the pipeline as that was your fault as long as it wasn't "intentional" damage.

We asked two specialty insurance companies. Pollution is really hard to get and both said they would not be able to offer coverage for this exposure for the landowner. Part of the problem is that the farmer would need to be negligent and the negligence if there is a leak would be on the owner of the pipeline and that's where the coverage needs to come from. We are not sure at this time that leakage from the carbon pipelines would even fit the definition of pollutant.

My suggestions:

The pipeline company needs to include "hold Harmless " language to the landowner. All potential damage, whether to real property, bodily injury or pollution, needs to go back to the pipeline company not the landowner. **Farmers should have NO liability for a pipeline from day 1 until the pipeline is removed, including ground taken by eminent domain.**

There needs to be language that if any damage to the land is incurred, it is the responsibility of the pipeline company to take care of it for as long as the pipeline is there. That includes any initial damage to any fences, drain tile or any other property and also if any repairs are made to the pipeline at any time in the future and the landowner's property is damaged, the pipeline operator fixes the property back to the previous condition. That would also include if any cattle got out of a pasture due to pipeline workers being on the property.

The contract needs to state that this is the responsibility of the current pipeline company and any future company that may acquire the pipeline.

I think there should be a high bond requirement by the state of South Dakota to take care of any future damages in case the company goes out of business or can't meet it's financial obligations.

Do we need legislation to protect farmers so that they're not liable for any damages as a result of a pipeline crossing their property? including the oil pipelines as well as the carbon pipelines and anything else in the future?

WELLS LIABILITY EXCLUSION**THIS ENDORSEMENT CHANGES THE PERSONAL LIABILITY AND
PERSONAL INJURY COVERAGE****- PLEASE READ THIS CAREFULLY -****PRINCIPLE COVERAGES**

Under **EXCLUSIONS**, the following is added under the **Exclusions That Apply to Coverages L and M:**

1. "Bodily injury" or "property damage" arising out of the emission, discharge, disposal, dispersion, release, escape, injection, or leakage of any oil, gas, petrochemical, drilling fluid, "hydraulic fracturing" material, oil, gas or other fluids or substances into any surface or ground water, into the air, or on to the ground that are held for use, have been used for or have been produced from any oil, gas, mineral or geothermal well, that are held for use in, have been used for or have been produced from any oil, gas, mineral or geothermal well.
2. "Bodily injury" or "property damage" caused by radioactivity that arises out of the drilling, re-drilling, "hydraulic fracturing", or operation of any oil, gas, mineral or geothermal well.
3. Any costs or expense incurred by "you" or at "your" request or by or at the request of any "co-owner of the working interest" in connection with controlling or bringing under control any oil, gas or mineral well.
4. "Property damage" included within the "underground resources and equipment hazard".
5. The cost of reducing any property included within the "underground resources and equipment hazard" to physical custody above the surface of the earth or of any body of water, or to the expense incurred or rendered necessary to prevent or minimize "property damage" to other property resulting from acts or omissions causing "property damage" included within the "underground resources and equipment hazard".
6. Damages claimed by any "co-owner of the working interest".
7. "Bodily injury" or "property damage" arising out of "oil or gas well operations" other than as described in items 1. through 6. above.
8. "Bodily injury" or "property damage" arising out of:
 - a. The settling, cracking, shrinking, bulging or expansion of pavement, retaining walls, foundations, walls, floors, roofs or ceilings; or
 - b. Earth movement, including:
 - i. Earthquake, aftershocks of an earthquake, landslide or mudflow;
 - ii. Subsidence, erosion or the sinking, rising, shifting, settling, collapse, slipping, falling away, tilting, cracking, caving in, expanding or contracting of earth;

iii. Any earth movement resulting from the injection into or removal from the earth of any liquids or mixtures; or

iv. Any earth movement resulting from water combining with the ground or soil or water leaving the ground or soil.

The following exclusion applies if the **Personal Injury Liability Coverage** endorsement is attached to the policy.

This insurance does not apply to:

1. "Personal injury" arising out of the emission, discharge, disposal, dispersion, release, escape, injection, or leakage of any oil, gas, petrochemical, drilling fluid, "hydraulic fracturing" material, oil, gas or other fluids or substances into any surface or ground water, into the air, or on to the ground that are held for use, have been used for or have been produced from any oil, gas, mineral or geothermal well that are held for use in, have been used for or have been produced from any oil, gas, mineral or geothermal well.
2. "Personal injury" caused by radioactivity that arises out of the drilling, re-drilling, "hydraulic fracturing", or operation of any oil, gas, mineral or geothermal well.
3. Any costs or expense incurred by "you" or at "your" request or by or at the request of any "co-owner of the working interest" in connection with controlling or bringing under control any oil, gas or mineral well.
4. Damages claimed by any "co-owner of the working interest".
5. "Personal injury" arising out of "oil or gas well operations" other than as described in items 1. through 4. above.

The following definitions are added to the **DEFINITIONS Section:**

"Co-owner of the working interest" means any person or organization that is, with you, a co-owner, joint venturer or mining partner in mineral properties who:

1. Engages in the operating expense of such properties; or
2. Has the right to engage in the control, development or operation of such properties.

"Oil or gas well operations" means the drilling, development, ownership, leasing, maintenance, use, operation, installation, modifying, monitoring, existence or capping of any oil or gas well (and any well's equipment, devices, storage or pipelines), whether the well was developed using "hydraulic fracturing" or with any other method.

"Underground resources and equipment hazard" includes "property damage" to any of the following:

1. Oil, gas, water, or other mineral substances which have not been reduced to physical custody above the surface of the earth or above the surface of any body of water;
2. Any well, hole, formation, strata, or area in or through which searching for or production of any substance is carried on; or

3. Any casing, pipe, bit, tool, pump, or other drilling or well servicing machinery or equipment located beneath the surface of the earth in any such well or hole or beneath the surface of any body of water.

"Hydraulic fracturing" is the process in which fractures in rocks below the earth's surface are opened and widened by injecting chemicals and liquids at high pressure: used for but not limited to the extraction of natural gas or oil.

All other provisions of the policy apply.