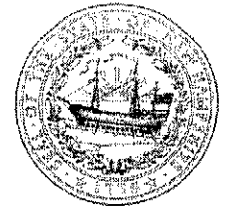




The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**



**Thomas S. Burack, Commissioner**

**Rep. D.L. Chris Christensen, Chairman**

***Oil Fund Disbursement Board***

February 3, 2009

The Honorable Judith T. Spang, Chairman  
House Resources, Recreation and Development Committee  
Room 305  
Legislative Office Building  
Concord, New Hampshire 03301

**SUBJECT: HB 355-FN-A, Relative to Oil Fund Disbursement Board Authority and Fees for Oil Discharge Cleanup**

Dear Chairman Spang:

Thank you for the opportunity to testify in support of House Bill 355-FN-A, which would increase gasoline and diesel fuel import fees that provide income for the Oil Discharge and Disposal Cleanup Fund (ODDCF) and Gasoline Remediation and Elimination of Ethers (GREE) Fund. These funds were established as dedicated environmental cleanup funds under RSA 146-D in 1988, and RSA 146-G in 2001, respectively. The bill would also add new Oil Fund Disbursement Board (Board) rulemaking authority, and make minor language corrections to existing law. The bill does not propose any new fees. Rather, it would increase the current import fee set by the Legislature in 1995, from \$0.015 to \$0.0175 per gallon. This increase will generate an estimated \$2,200,000 in additional annual income needed to meet expense demand for contamination cleanup work throughout the state, and thus maintain the current level of services. 100% of this income will be passed-through to eligible parties that need the funds.

The ODDCF and GREE Fund provide funding for important and very successful programs administered by the Board that serve a critical role in the cleanup of gasoline, diesel fuel and "MtBE" contamination, and restitution for third-party damages, in nearly every community in the State. Despite a legislative ban of this additive from the State gasoline supply effective January 1, 2007, recent U.S. Geological Survey studies have found that MtBE is present in groundwater statewide and contamination will be very slow to degrade in the future. Many contamination cleanup projects involve innocent adjacent landowners and impacts to public and private drinking water supply wells. Contrary to previous testimony before the Legislature and opinions stated in the press, data maintained by the Department of Environmental Services (Department) clearly indicates *the funds are not a subsidy for major oil companies*. In fact, the majority of cleanup funding benefits New Hampshire businesses and private property owners, while only 17% benefits major oil companies.

The ODDCF is also a USEPA-approved "financial responsibility mechanism" for underground storage tank (UST) facility owners and operates as excess insurance. Like the funds established in the majority of the states, the ODDCF was established because private insurance coverage for existing contamination cleanup is generally not available, due to "absolute pollution exclusion" language in standard commercial property insurance policies. Thus, the ODDCF provides important environmental liability protection for UST owners, because maintaining financial responsibility for cleanups is a federal and State regulatory requirement. As a USEPA-approved financial responsibility program, the ODDCF leverages

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approximately \$1,100,000 per year in federal grants to the Department for UST compliance and cleanup program management. Under the federal Energy Policy Act of 2005, Subtitle B Underground Storage Facility Compliance, USEPA can withdraw financial responsibility program approval if the ODDCF becomes insolvent, placing those grant funds at risk.

At present, over 800 existing cleanup projects are supported by the ODDCF and GREE Fund and of these, nearly 100 are State, county and local government projects averaging \$620,000 in total annual cleanup costs. In addition, the ODDCF and GREE Fund are available to support new cleanup projects that are (statistically) likely to occur at 1,857 motor fuel storage facilities operating throughout the state. The State, counties, and local governments operate 260 of these facilities. Completion of cleanup projects is directly dependent on funding availability. Because annual income at the current \$0.015 per gallon import fee is not adequate, cleanup actions are being delayed at 48 sites across the State. Estimated cleanup costs for these delayed sites total \$6,820,000. In addition, as of January 31, 2009, there are 383 cleanup payment requests "in-house" totaling \$2,249,000 awaiting approval on a first-in, first-out basis.

ODDCF and GREE Fund income at the existing \$0.015 per gallon import fee is not adequate because gasoline and diesel fuel imports have been level in recent years, and there was no previous adjustment to the import fee (since 1995) despite general inflation and program-specific cost increases. Further, there was no import fee increase when the GREE Fund was established in 2001, even though cleanup and research activity expanded significantly to address the statewide MtBE contamination problem. Finally, ODDCF income needed for regular cleanup program work has been diverted to non-program uses. \$1,800,000 was appropriated to the Department of Transportation in the FY 2006 – 2007 Capital Budget for UST replacement.

The ODDCF and GREE Fund fiscal situation is shown in Table 1, below.

Table 1. ODDCF & GREE Fund Fiscal Situation

Fiscal Year	Income	Expenses	Annual Income vs. Expense (Deficit) Surplus	Balance
2006	\$13,908,903	\$15,858,980	(\$1,950,077)	\$5,081,865
2007(1)	\$15,657,461	\$16,946,801	(\$1,289,340)	\$3,792,525
2008	\$13,740,616	\$14,561,920	(\$821,304)	\$2,971,221
2009(2)	\$13,593,914	\$15,600,000	(\$2,006,086)	\$965,135

(1) FY2007 income includes a \$2,027,469 legal settlement with ExxonMobil Corporation regarding insurance coverage

(2) Projected year end balance is based on revenues through December 31, 2008 and cleanup funding demand of \$13.8M to \$14.4M. The current FY 2009 cleanup funding budget is \$11.88M

Proposed cleanup budgets for FY 2010 - 2011 are \$2,000,000 below demand to balance with projected income at the existing \$0.015 per gallon import fee. As noted above, 100% of the income from the \$0.0025 per gallon import fee increase under HB 355-FN-A will be passed-through to eligible parties that need the funds to perform contamination cleanup and monitoring. No increase in Board staffing and administrative budgets is needed or proposed. The import fee increase may result in a nominal consumer cost increase of \$2.50 per 1,000 gallons of motor fuel purchased. In the aggregate, this nominal increase provides significant and needed

benefits for maintaining and restoring environmental quality and protecting public health for all the citizens of the State.

Additional problems that may develop without an import fee increase include the following:

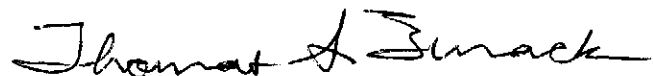
- *Cleanup could be further delayed at high priority sites with known impacts to public or private drinking water supplies where public health is at risk, and environmental quality may degrade as an existing backlog of sites requiring cleanup continues to grow due to insufficient funds.*
- *As time progresses, contamination can extend further and increase cleanup costs at sites where work is being delayed due to insufficient funds. The increase in cleanup costs will result in fewer sites being cleaned up annually, thereby increasing the backlog even more.*
- *As groundwater contamination extends further due to delayed cleanup and increased costs, public and private drinking water supplies are exposed to even greater risk.*
- *Economic development can be adversely affected because environmental contamination on site and the risk of environmental contamination migrating from nearby properties are known barriers to the redevelopment or sale of real estate in the State.*

In addition to increasing the import fee, HB 355-FN-A would make technical language corrections and add new Board rulemaking authority. The undefined term "motor fuel" in RSA 146-D:2, I and RSA 146-D:3, VI, would be replaced with the defined word "oil", to be consistent with RSA 146:D, 2, III. RSA 146-D:5, I is modified for clarity. The new rulemaking authority will allow the Board to establish cleanup cost and third-party damage cost co-payment criteria in addition to the initial cleanup cost, i.e., "deductible", requirements of RSA 146-D:6, II(a). This will allow the Board to consider other factors, such as overall financial condition, when assessing the needs of parties that are eligible for funding from the four funds administered by the Board. These include the ODDCF, GREE Fund, Fuel Oil Discharge Cleanup Fund under RSA 146-E and Motor Oil Discharge Cleanup Fund under RSA 146-F.

Thank you for your careful consideration of this important bill. If you have questions, please contact Michael J. Wimsatt, P.G. Director of the Waste Management Division at (603) 271-2905 [Michael.Wimsatt@des.nh.gov](mailto:Michael.Wimsatt@des.nh.gov), or Timothy R. Denison at (603) 271-2570 [Timothy.Denison@des.nh.gov](mailto:Timothy.Denison@des.nh.gov). Detailed ODDCF and GREE Fund program operating reports are available.

Sincerely,

Rep. D.L. Chris Christensen, Chairman  
Oil Fund Disbursement Board



Thomas S. Burack, Commissioner  
Department of Environmental Services

cc: Members of the Resources, Recreation and Development Committee  
Rep. Dennis Vachon  
Oil Fund Disbursement Board