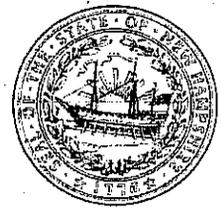




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Rep. D.L. Chris Christensen, Chairman

Oil Fund Disbursement Board

February 9, 2010

The Honorable Susan W. Almy, Chairman
House Ways and Means Committee
Room 202
Legislative Office Building
Concord, New Hampshire 03301

SUBJECT: HB 1292, As Amended, Relative to Underground Storage Tank Facility Permits, Compliance, and Cleanup Fund Eligibility

Dear Chairman Almy:

Thank you for the opportunity to testify in support of House Bill 1292. This legislation addresses a number of statutory changes that the Department of Environmental Services (DES) and Oil Fund Disbursement Board (Board) believe are important for efficient and effective program operations, and which benefit New Hampshire citizens. None of these changes will increase program operating costs or result in a fiscal impact. If enacted into law, House Bill 1292 would accomplish the following:

- 1.) RSA 146-C: 4, I, requires that all underground storage tank (UST) facilities be permitted by DES. The bill removes the last sentence in RSA 146-C: 4, II, which requires that DES issue UST permit renewals every five years. Removal of this provision will alleviate an unnecessary administrative burden and allow more of our personnel time to be re-directed to more important activities such as UST facility inspections and follow-up to ensure operational compliance.
- 2.) The bill makes a technical correction to RSA 146-C: 16, I(c) (2), by removing the word "not" in the last sentence of the paragraph, which was a drafting error inadvertently carried through to the final version of the Laws of 2007, Chapter 376. This legislation added authority for DES to "red tag" USTs that are not in operational compliance and thus at risk of leaking. The red tag is a notice affixed to the fill pipe indicating that the UST cannot be filled with product and operated. The red tag provisions of RSA 146-C include a process for removal of the tag, provided the UST operational compliance deficiencies are addressed by the facility owner. It is important to make this technical correction so the meaning of the provision is clear to the regulated community.
- 3.) The Oil Discharge and Disposal Cleanup Fund (RSA 146-D), Fuel Oil Discharge Cleanup Fund (RSA 146-E), and Motor Oil Discharge Cleanup Fund (RSA 146-F) provide contamination cleanup funds for owners of petroleum storage tank facilities. Under current law, transfer of cleanup fund eligibility (i.e., coverage) to landowners where storage tank facilities were located is permitted, if the facilities were closed on or after July 1, 1988 under RSA 146-D, October 1, 1992 under RSA 146-E, and October 1, 1995 under RSA 146-F. These dates were included in the statutes due to concerns that numerous landowners would submit claims for contaminated properties without storage tanks or for properties where the storage tank owner did not initiate cleanup. Now that the funds have operated for 15-20 years or more, the date restrictions are interfering with property sales

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and redevelopment for a small number of locations where the tanks were closed *prior* to the statutory dates. At these locations, the original owners of the closed storage tank facilities are continuing cleanup after they have sold the properties, to provide security to the landowners and assurances to lenders that cleanup will be completed. With the passage of time, there is significant risk that those tank owners will die or become unwilling to continue cleanup, and the landowners will become liable without fund coverage. Banks and other lenders are uncomfortable with these circumstances, and are reluctant to offer financing for affected properties.

HB 1292 removes the closure date restrictions and¹ makes coverage available to landowners where "*compliant facilities were located*", i.e., at those storage tank facilities that are properly closed. That phrase prevents newly discovered contaminated properties from being funded where there is no connection to the operation of storage tanks, consistent with the intent of current law. Discovery of new contaminated properties where compliant tanks were located is now a very rare occurrence, and for those locations where cleanup costs are being incurred by the storage tank facility owners, the same costs will instead be incurred by the landowners. Hence, no demonstrable increase in cleanup cost expenditures would result from the passage of HB 1292.

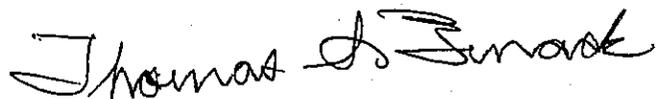
The Resources, Recreation and Development Committee amended the bill to correct language relative to eligibility transfer (Item 3 above), that was identified by Committee researchers as being incomplete or of concern. The amendment did not change the purpose or intent of the bill, nor did it create a fiscal impact.

Attached is a proposed amendment to increase the "deductible" for on-premise-use heating oil facilities from \$100 to \$500, with the exception of "SAFETANK"-qualified owners. The amendment is offered in consideration of the Fuel Oil Discharge Cleanup Fund fiscal situation, and the findings of the Legislative Budget Assistant in a December 2009 Performance Audit Report on the fund. Please be advised that the language "demonstrated financial need", exists in current law and only establishes general criteria for participating in the SAFETANK program. The Board has adopted administrative rules with specific criteria for program participation including demonstration of financial need.

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, or Timothy R. Denison at (603) 271-2570 Timothy.Denison@des.nh.gov.

Sincerely,

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



Thomas S. Burack, Commissioner
Department of Environmental Services

Attachment
cc: Members of the Ways and Means Committee
Rep. Leigh Webb
Oil Fund Disbursement Board

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Amendment to HB 1292

1 Amend Section 6 of the bill at line # on page #, by substituting \$500 for \$100 relative to liability for
2 on-premise-use facility initial cleanup costs.

3 Amend the bill by inserting after Section 6 the following new Section 7, and re-numbering the
4 remainder of the bill accordingly:

5 7 Fuel Oil Discharge Cleanup Fund Eligibility. Amend RSA 146-E, 6, II to read as follows:

6 II. Owners of facilities or land eligible under this chapter may apply for reimbursement of
7 court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-
8 site and off-site cleanup of fuel oil discharges in amounts not to exceed a total of \$500,000, incurred
9 on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter
10 who have demonstrated financial need, may apply for reimbursement of costs to meet the
11 requirements of RSA 146-E:4, I and II in amounts not to exceed a total of \$1,500 and may apply for
12 reimbursement of underground storage tank abandonment or removal costs in amounts not to
13 exceed a total of \$2,500, incurred on or after the effective date of this paragraph. *For such owners*
14 *who have demonstrated financial need, the amount of initial cleanup cost liability under*
15 *paragraph I of this section shall be reduced to \$100.*