



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Rep. Leigh A. Webb, Chairman

Oil Fund Disbursement Board

April 24, 2013

The Honorable Russell Prescott, Chairman
Senate Energy and Natural Resources Committee
Room 101
Legislative Office Building
Concord, New Hampshire 03301

SUBJECT: HB 184-FN As Amended by the House, Relative to the Oil Discharge Cleanup Fund(s)

Dear Chairman Prescott:

Thank you for the opportunity to testify supporting House Bill 184-FN, as amended by the House. The three dedicated funds affected by this bill were established for oil contamination cleanup, and are administered by the Oil Fund Disbursement Board (Board) with assistance from the Department of Environmental Services (DES). The three funds provide coverage for investigation and cleanup costs if there is no insurance; or excess coverage if insurance is not sufficient. An oil cleanup fund summary is attached. There are no new fees or increases to existing fees associated with this bill. As discussed on page 2, the potential fiscal impact of the bill is negligible.

The first provision of the bill adds a 45,000 gallon facility storage capacity limitation to the Motor Oil Discharge Cleanup (MOD) Fund, established under RSA 146-F. Two other funds administered by the Board, the Oil Discharge and Disposal Cleanup (ODD) Fund and Fuel Oil Discharge Cleanup (FOD) Fund, were established prior to the MOD Fund and already have capacity limitations. A capacity limitation was not included when the MOD Fund was established because its anticipated use was for small facilities. This limited use has been the actual practice based on facility owner need, but it is not supported by the statutory language. The Department of Justice has advised the Board that a capacity limitation cannot be established administratively.

The Board believes a MOD Fund capacity limitation should be added at this time, based on concerns that came to light relative to a new motor oil "re-refining" facility sited in Rollinsford that has a very large storage capacity. Typical MOD Fund income of \$265,000 per year has been sufficient for small facility cleanups, but would not be sufficient for a large facility cleanup. Based on concerns raised about the potential impacts on the MOD Fund for releases that may occur from such large facilities, the Board convened an ad-hoc workgroup of Board members, industry representatives, and DES staff to consider issues and alternatives. The workgroup concluded that the new facility did not represent a significant financial risk to the MOD Fund, based on its state-of-the-art technology and comprehensive insurance coverage. However, adding a MOD Fund facility storage capacity limitation provides a contingency in the event that a large facility allows its insurance to lapse and then has a significant release. Such a limitation

is also consistent with the ODD Fund and FOD Fund limitations. There are 416 operating motor oil/used oil storage facilities, of which only four have a storage capacity greater than 45,000 gallons. Representatives of those four facility owners participated on the workgroup. It is our understanding they are not opposed to a MOD Fund capacity limit. There was no testimony opposing a capacity limit during House hearings.

The remaining provisions of the bill correct statutory inconsistencies and add related Board rulemaking authority to benefit oil product importers. Income to the three funds mentioned above, as well as some of the income of the Oil Pollution Control (OPC) Fund and the Hazardous Waste Cleanup (HWC) Fund, is derived from oil import fees paid by licensed distributors and collected by the Department of Safety (DOS). Licensees paying cleanup fund import fees also pay Highway Fund fees (i.e., "road toll"). Licensees with fee payment/reporting problems are assessed penalties and interest by DOS. Licensees can request a waiver of penalties *and* interest for the Highway Fund, OPC Fund, MOD Fund, and HWC Fund, but can seek waivers of penalties only for the ODD Fund and FOD Fund.

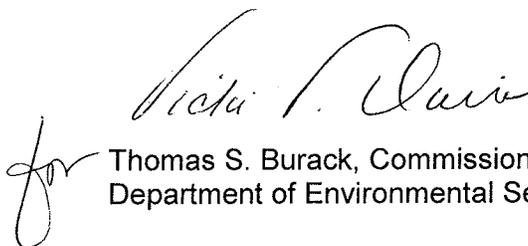
The lack of waiver consistency became of concern to the Board due to the recent transition of the DOS collection system from paper to electronic. Waiver consistency would provide fairness to licensees that pay all of the various fees, and would end current confusion. It would also lessen the administrative burden on DOS, which is responsible for researching licensee performance, assembling interest and penalty waiver request documents, and providing a waiver recommendation to the Board and DES. House Bill 184-FN amends RSA 146-D to allow waivers of ODD Fund interest, in-turn allowing FOD Fund interest waivers (which follow the same process), thus bringing consistency among all cleanup funds. Should interest waivers be granted, the amount of lost income would be negligible.

Thank you for your careful consideration of this important bill. If you have questions, please contact Michael 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. Leigh A. Webb, Chairman
Oil Fund Disbursement Board



Thomas S. Burack, Commissioner
Department of Environmental Services

Attachment

cc: Members of the Energy and Natural Resources Committee
Rep. Robert Haefner
Sen. Lou D'Allesandro
Oil Fund Disbursement Board

N.H. Oil Cleanup Fund Categories, Statutes, And Products

Oil Fund Disbursement Board Funds				DES Fund
Excess Insurance Funds For Storage Tank Owner Cost Reimbursement			Site Owner Cost Reimbursement & State Costs	State Costs Only
RSA 146-D 1988 "ODD Fund"	RSA 146-E 1993 "FOD Fund"	RSA 146-F 1995 "MOD Fund"	RSA 146-G 2001 "GREE Fund"	RSA 146-A 1971 "OPC Fund"
Motor Fuel (Gasoline & Diesel) Cleanups	Heating Oil Cleanups & Storage Tank Upgrades	Motor (Lube) Oil Cleanups	MtBE Cleanups	Inland & Coastal Oil Spill Cleanups, Preparedness

