



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

Rep. D.L. Chris Christensen, Chairman

Oil Fund Disbursement Board

April 8, 2010

The Honorable Martha Fuller Clark, Chairman
Senate Energy, Environment and Economic Development Committee
Room 102
Legislative Office Building
Concord, New Hampshire 03301

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

Dear Chairman Clark:

Thank you for the opportunity to testify in support of HB 1292-FN. This legislation addresses 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 that will benefit New Hampshire citizens. These changes are described in the paragraphs numbered 1-4 below. The House amended the bill to make technical corrections identified by Committee researchers, and to increase the cleanup cost "deductible" for owners of on-premise-use heating oil storage tanks (see #4 on page 2). Neither the original bill nor the House amendments will increase program operating costs or result in a demonstrable fiscal impact.

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. The 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 coverage is permitted to ensure cleanup continues at locations where tanks are closed and the properties are subsequently sold. This transferability provides security to property purchasers and assurances to lenders that cleanup will be completed. Municipalities that acquire contaminated properties through tax deed are particular benefactors of coverage transferability.

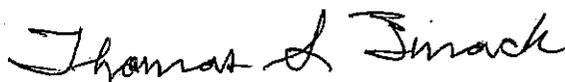
However, if the tanks were closed before July 1, 1988 under RSA 146-D, October 1, 1992 under RSA 146-E, or October 1, 1995 under RSA 146-F, coverage cannot be transferred. Thus, to continue to maintain project eligibility under these funds, the original tank owners must continue the cleanups even after they sell their property. These restriction dates were included in the statutes due to concerns that numerous landowners would submit claims for contaminated properties without storage tanks, or where storage tank owners did not initiate cleanup. The funds have now operated for 15-20 years or more and those concerns have not been realized. Today, the transfer date restrictions only affect 32 out of 720 active cleanup project locations. For those locations, there is significant risk that the tank owners will die or become unwilling to continue cleanup, and the property owners (or prospective purchasers) will become liable for the cleanups but without the benefit of fund coverage. Banks and other lenders are uncomfortable with these circumstances, and are reluctant to offer financing for affected properties. Moreover, municipalities are unwilling to take properties if cleanup coverage is not available.

HB 1292-FN removes the closure date restrictions and instead makes coverage available to landowners where "*compliant facilities were located*". That phrase permits universal transferability, but still prevents newly-discovered contaminated properties from being funded where there is no connection to the operation of storage tanks, provided that the tank owner completed proper closure. This is consistent with the intent of current law. After coverage is transferred, the same costs being incurred by those 32 storage tank owners will instead be incurred by the property purchasers/new landowners. Hence, no demonstrable increase in cleanup cost expenditures would result from the adoption of this provision of HB 1292-FN.

4.) Finally, HB 1292-FN increases the "deductible" for owners of on-premise-use heating oil tanks that leak and receive contamination cleanup funding under RSA 146-E. An increase in the deductible from \$100 to \$500 was recommended by the Legislative Budget Assistant in his December 2009 Performance Audit Report, and is supported by the Board. The deductible increase primarily affects homeowners and business owners, and will reduce annual cleanup expenses borne by this fund by approximately \$57,000. Although there is a \$400 cleanup cost increase to the home/business owner, it is small compared to the average \$17,300 in cleanup cost coverage received. The cleanup cost savings will be re-directed to low income homeowners who qualify for up to \$1,500 in tank replacement/upgrade assistance, to prevent leaks from occurring and thus avoid future cleanup expenses. The deductible for these low-income homeowners will remain at \$100.

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

cc: Members of the Energy, Environment and Economic Development Committee
Rep. Leigh Webb
Oil Fund Disbursement Board