The State of New Hampshire
Department of Environmental Services
Thomas S. Burack, Commissioner

Celebrating 25 years of protecting New Hampshire's environment

January 31, 2012

The Honorable Stephen Stepanek, Chairman
House Ways and Means Committee
Room 202
Legislative Office Building
Concord, New Hampshire 03301

SUBJECT: HB 1489-FN, Repealing the Decrease of the Fuel Oil Importation Fee

Dear Chairman Stepanek:

Thank you for the opportunity to testify supporting House Bill 1489-FN. The fee that is the subject of this bill provides income for a fuel oil discharge prevention and contamination cleanup program established by the Legislature in 1993, under RSA 146-E. The program is administered by the Oil Fund Disbursement Board (Board) with assistance from the Department of Environmental Services (DES), and offers significant public health and environmental protection benefits to New Hampshire.

The fuel oil discharge cleanup component of the program primarily assists homeowners, but local governments, counties, schools, churches, and businesses also rely on the program to pay fuel oil contamination cleanup costs not covered by insurance. Low-income qualified homeowners rely on the prevention component of the program to replace deteriorated fuel oil storage tanks before a discharge occurs, thus avoiding much more costly cleanups. The Board strongly supports discharge prevention funding. The FY 2012 and FY 2013 budget for the entire program is \$3,170,193 and \$3,161,228 respectively, of which, \$2,500,000 each year is for pass-through to program recipients for cost reimbursement. The balance is for DES costs to manage cleanup projects, inspect storage tanks for discharge prevention, process recipient reimbursement payments, and general administration.

From 1999 to 2009, the fuel oil importation fee was 1.0¢ per gallon. In 2009, the Board supported legislation seeking a 1.25¢ fee based on data that funding for discharge prevention was inadequate due to flat or declining imports. The Ways and Means Committee agreed in principal, but recommended additional study. The Legislature ultimately approved a fuel oil importation fee of 1.25¢ per gallon for FY 2010 only, and commissioned a Legislative Budget Assistant (LBA) performance audit. The December 2009 LBA report concluded that the program is effective and functioning as intended, but income was not sufficient to fully support needed work as the Board had represented. The LBA also made 16 recommendations regarding program administration and operation, which the Board began implementing soon thereafter.

In 2010, the Board supported legislation to make the 1.25¢ fee permanent. The Legislature passed a two-year extension of the 1.25¢ fee through June 30, 2012, and required that the Board submit a report on the administration of the program to formally address the LBA

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audit findings. The report was provided to the Ways and Means Committee in November 2011 and indicated that action on 15 of the LBA recommendations is complete or substantially complete, and action on one recommendation is in-progress. The report also indicated that the fiscal situation has not improved, re-affirming the LBA conclusion regarding insufficient income. Tables 7 and 9 from the report summarize the data and are attached for your reference.

In summary, because fuel oil imports are still flat or declining, a 1.25¢ per gallon importation fee helps maintain income levels to meet the statutory purpose of the program. Reducing the fee to 1.0¢ would result in a 20% loss of annual income that would significantly reduce program benefits. However, considering retail fuel oil pricing and price variability, the difference between a 1.25¢ fee and a 1.0¢ fee may have minimal or no impact on an individual purchaser of fuel oil. Assuming that the entire 1.25¢ importation fee is passed-through to purchasers, comprehensive discharge prevention and contamination cleanup coverage costs only $12.50 for every 1,000 gallons purchased. Therefore, the Board and DES continue to champion the program because it provides very high public health and environmental protection value at very low individual cost. We support HB 1489-FN, which repeals a fee reduction to 1.0¢ that would be effective June 30, 2012, leaving the fee at 1.25¢ and providing the needed income.

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,

Thomas S. Burack

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

Thomas S. Burack, Commissioner
Department of Environmental Services

Attachments

cc: Members of the Ways and Means Committee
Rep. Bill Ohm
Rep. Charlene Lovett
Sen. John Barnes, Jr.
Sen. Amanda Merrill
Oil Fund Disbursement Board

Table 7 - Legislative Budget Assistant December 2009 Fuel Oil Discharge Cleanup Fund Performance Audit Findings

LBA Recommendation	Status
Work scope/budget process improvements (Observations 1 & 2)	**Substantially Complete.** DES updated work scope/budget review methods and personnel training, and prepared internal Standard Operating Procedures. Development of a new electronic system for tracking approved budgets for comparison with payment requests is complete. This new system will be phased-in in 2012
Require contractor timesheets, eliminate payment for electronic reporting, establish reimbursement time limits and clarify rule for performance standards (Observations 3, 6, 8 partial & 13)	**Complete.** Amended administrative rules for timesheets/timesheet summaries, reimbursement time limits and performance standards were adopted and will be effective September 1, 2011. Payment for electronic reporting discontinued with revisions to allowable costs published in the program Guidance Manual
Increase the $100 on-premise-use heating oil facility deductible (Observation 4)	**Complete.** HB 1292 effective May 18, 2010, increased the on-premise-use facility deductible to $500 for owners not qualifying for low-income assistance
Seek Department of Justice (DOJ) and Department of Insurance (DOI) guidance on property restoration costs, private insurance coverage, and tank compliance (Observations 5, 10, 11, & 12)	**Complete.** DOJ determined that reasonable property restoration costs are eligible for payment, consistent with Board policy. DOJ confirmed that payments may be issued for locations where tanks are compliant with applicable operating standards. DES, DOJ, and DOI worked jointly on new guidance regarding the expected role of private insurance in oil contamination cleanups. DOI issued a bulletin to all insurance carriers on the process for handling oil spill cleanup insurance claims.
Track total fund liabilities (Observation 8 partial)	**Substantially Complete.** New electronic system for tracking approved budgets for comparison with payment requests will also provide liability costing.
Analyze administrative cost allocations, and reconcile Dept. of Safety (DOS) gallon/revenue reports (Observations 7& 9)	**Substantially Complete.** The DES program management and administrative cost allocation process is consistent among the four funds administered by the Board, and total cost allocations are commensurate with fund activity (see Table 8). Conversion of employee payroll to the NH FIRST (Lawson) system and possible phase-out of the DES Ledger system may improve cost allocation. The new DOS on-line fee collection system may facilitate more frequent reporting and reconciliation of gallonage reports.
Ensure all documents are available electronically, and Board and DES document retention policies are consistent, train personnel accordingly (Observations 14 & 15)	**Complete.** All documents are now electronic. Amended administrative rules to make Board records retention schedule consistent with DES were effective April 28, 2011.
Perform formal database risk assessment (Observation 16)	**In-Progress.** DES is working with DoIT on a database risk assessment. DoIT funding/personnel limitations could delay completion.

Oil Fund Disbursement Board FY 2011 Annual & Supplemental Report

Table 9 - Fuel Oil Discharge Cleanup Fund Revenues, Expenses & Balance

Fiscal Year	Revenue (1)	Expenses (2)	Fund Balance	Factors Affecting Revenues & Expenses
2005	$3,555,803	$3,276,641	$957,173	Import fee was 1.0¢ per gallon from FY 2000 through FY 2009. Imports and revenues generally declined from FY 2005, while steady demand for cleanup and SAFETANK funds continued. SAFETANK approvals were sharply reduced in FY 2008 to earmark funds for cleanup. Cleanup projects were re-prioritized and some put on hold in FY 2009, due to low fund balance and uncertainty about revenues.
2006	$3,081,973	$3,377,335	$661,811	
2007	$3,171,445	$2,970,517	$862,739	
2008	$2,867,751	$2,789,479	$941,011	
2009	$2,794,379	$3,351,646	$382,744	
2010	$3,198,254	$2,916,419	$664,578	HB 296-FN-A increased import fee to 1.25¢ per gallon for 1 year and provided a $400,000 transfer from the Oil Pollution Control Fund. However, FY 2010 fuel oil imports declined 23% from FY 2009, so FY 2010 import fees ($2,798,254) were only slightly higher than FY 2009. Uncertainty over continuation of the fee at 1.25¢ continued cleanup delays.
2011	$3,042,855	$2,146,343	$1,561,090	HB 1291-FN extended fee increase for another 2 years. Fuel oil imports and revenues were above FY 2010 but still a declining trend. Cleanup expenses declined sharply, inconsistent with average demand, because projects previously put on hold were not restarted until mid-year. SAFETANK expenses increased $100,000 over FY 2008 low of $130,000, but are well below FY 2006 high of $497,000. Continued uncertainty about future revenues affects willingness of parties to perform cleanup and SAFETANK work.
2012 - Projected	*$2,950,000*	*$3,170,193*	*$1,340,897*	Import fee will revert to 1.0¢ at close of FY 2012 if not extended. FY 2013 revenue reflects an import fee decrease. Expenses may be reduced from the budgeted amounts shown, to avoid a low fund balance at the end of FY 2013. Future expenses would have to reflect revenues and available balance if fee is not maintained at 1.25¢. Cleanup and SAFETANK budgets are set in consideration of available revenues and average demand. Potential demand, particularly for SAFETANK, is greater than available revenues.
2013 - Projected	*$2,390,000*	*$3,161,228*	*$569,669*	

NOTES:

(1) Revenues include import fees reported monthly by Dept. of Safety, audit revenues, and account interest

(2) Expenses include cleanup and SAFETANK reimbursements, and program management and administrative (PMA) costs. For FY 2012 and FY 2013, the cleanup and SAFETANK budget is $2,500,000 per year, and the PMA budget is based on anticipated draws to support the four-fund PMA account.