



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



**Thomas S. Burack, Commissioner**

**Kevin A. Sheppard, P.E., Vice Chairman**

*Oil Fund Disbursement Board*

January 22, 2013

The Honorable Shannon Chandley, Chair  
House Resources, Recreation and Development Committee  
Room 305  
Legislative Office Building  
Concord, New Hampshire 03301

**SUBJECT: HB 184-FN, Relative to the Oil Discharge Cleanup Funds**

Dear Chairman Chandley:

Thank you for the opportunity to testify supporting House Bill 184-FN. 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.

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

DES Web Site: [www.des.nh.gov](http://www.des.nh.gov)

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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 as a contingency.

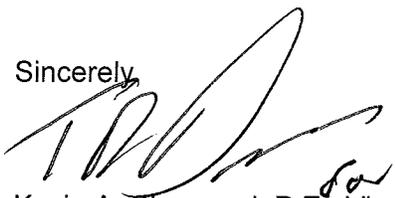
The second provision of the bill corrects a statutory inconsistency to benefit oil product importers, and with no adverse fiscal impacts. Income to the three funds mentioned above, as well as some of the income of the Oil Pollution Control (OPC) Fund and the Hazardous Waste Cleanup (HWC) Fund, is derived 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.

Finally, in reviewing the bill as introduced, we noted a typographical error for Section 2, at line 6, which should read: "RSA 146-~~D~~:3,III." Since the LSR request, we also identified another statute inconsistency in RSA 146-F:3,II, and the need to amend the Board's rulemaking authority under RSA 146-D:5,I (f). A proposed amendment is attached.

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](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).

Sincerely,



Kevin A. Sheppard, P.E., Vice Chairman  
Oil Fund Disbursement Board



Thomas S. Burack, Commissioner  
Department of Environmental Services

Attachments

cc: Members of the Resources, Recreation and Development Committee  
Rep. Leigh Webb  
Rep. Robert Haefner  
Sen. Bob Odell  
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

Rep. Webb  
January 22, 2013  
2013-####  
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**Amendment to HB 184-FN**

1 Edit Section 2. line 6 to read as follows:

2 2. Fund Established; Collection. Amend RSA 146-~~D~~:3, III to read as follows:

3

4 Add the following new Sections 3 & 4 after Section 2. to read as follows, and renumber existing  
5 Section 3 as Section 5:

6 3. 146-F:3 Fund Established; Collection. Amend RSA 146-F:3, II to read as follows:

7 II. A fee of \$.04 per gallon of motor oil shall be assessed at the time of importation into this state.

8 Persons licensed under RSA 146-A:11-b, II shall be liable for payment of this additional fee which  
9 shall be collected and enforced by the department of safety in the manner described in RSA 146-

10 A:11-b. The oil fund disbursement board, *pursuant to rules adopted under RSA 146-D:5*, may  
11 waive all or any portion of penalties or interest for good cause. All fee revenues shall be deposited  
12 in the motor oil discharge cleanup fund. If the fund's balance becomes greater than \$1,000,000, the  
13 assessment of fees shall be discontinued and only reestablished when the fund's balance is less than  
14 \$600,000.

15 4. 146-D:5 Board Powers and Duties. Amend RSA 146-D:5, I (f) to read as follows:

16 (f) Waiver of penalties *or interest* due or past due under RSA 146-D:3, III, *and RSA 146-F:3, II.*

HB 184-FN – AS INTRODUCED

2013 SESSION

13-0388  
08/04

HOUSE BILL        ***184-FN***

AN ACT            relative to the oil discharge cleanup fund.

SPONSORS:        Rep. L. Webb, Merr 3; Rep. Haefner, Hills 37; Sen. D'Allesandro, Dist 20;  
Sen. Odell, Dist 8

COMMITTEE:       Resources, Recreation and Development

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ANALYSIS

This bill adds a motor oil discharge cleanup fund coverage limitation based on facility storage capacity.

This bill is a request of the oil fund disbursement board.

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Explanation:      Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT                   relative to the oil discharge cleanup fund.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           1 Motor Oil Storage Facility; Definition. Amend RSA 146-F:2, II to read as follows:

2           II. "Motor oil storage facility" means a location consisting of a system of storage tanks, pipes,  
3 pumps, and appurtenant structures, ***singly or in any combination with a total storage capacity***  
4 ***of less than or equal to 45,000 gallons***, which is, or has been, used for the storage of motor oil or  
5 used motor oil.

6           2 Fund Established; Collection. Amend RSA 146-F:3, III to read as follows:

7           III. The fee provided for in this section shall be collected by agents of the department of  
8 safety, in the same manner as provided for in RSA 260:38. Such funds shall be deposited in the oil  
9 discharge and disposal cleanup fund established under this chapter. Any person who fails to obtain  
10 a license, file a report, or pay the fees established in this chapter shall be subject to the penalties and  
11 interest described in RSA 146-A:11-b. The board, pursuant to rules adopted under RSA 146-D:5,  
12 may waive all or any portion of such penalties ***or interest***, for good cause.

13           3 Effective Date. This act shall take effect July 1, 2013.

LBAO  
13-0388  
01/04/13

**HB 184-FN - FISCAL NOTE**

AN ACT           relative to the oil discharge cleanup fund.

**FISCAL IMPACT:**

The Legislative Budget Assistant has determined that this legislation has a total fiscal impact of less than \$10,000 in each of the fiscal years 2013 through 2017.