

Bill as Introduced

HB 1292 - AS INTRODUCED

2010 SESSION

10-2050
08/10

HOUSE BILL **1292**

AN ACT relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

SPONSORS: Rep. C. Christensen, Hills 19; Rep. Webb, Merr 2

COMMITTEE: Resources, Recreation and Development

ANALYSIS

This bill removes provisions necessitating periodic re-issuance of underground storage tank facility permits and removes provisions which limit transfer of oil cleanup fund coverage.

This bill is a request of the department of environment services and the oil fund disbursement board.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

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

1 1 Underground Storage Facility Permits. Amend RSA 146-C:4, II to read as follows:

2 II. The department shall issue or deny a permit to all facilities registered under RSA 146-
3 C:3 within 90 days of the receipt of the complete registration information. A permit issued under
4 this section shall be displayed on the premises of the underground storage facility at all times.
5 [~~Permits shall be valid for a period of 5 years.~~]

6 2 Underground Storage Facility Compliance; Appeals. Amend RSA 146-C:16, I(c)(2) to read as
7 follows:

8 (2) The department shall inspect the underground storage tank or facility within
9 5 business days of notification to determine whether the tank or facility is now in compliance with
10 department rules, regardless of whether it has authorized removal of the red tag by the owner or
11 operator. If, upon inspection, the department determines that the system is [~~not~~] in compliance and
12 the department has not already authorized the removal of the red tag, the department shall
13 immediately remove the red tag.

14 3 Oil Discharge and Disposal Cleanup Fund Eligibility. RSA 146-D:6, I and the introductory
15 paragraph of RSA 146-D:6, I-a are repealed and reenacted to read as follows:

16 I. The fund shall be available to owners of underground storage facilities which are subject
17 to the provisions of RSA 146-C and which are in compliance with department rules, or owners of land
18 where such facilities were located.

19 I-a. The fund shall be available to owners of bulk storage facilities that are subject to the
20 provisions of RSA 146-A and which are in compliance with department rules, or owners of land
21 where such facilities were located. Reimbursements shall only be made for costs of cleanup and
22 third party damages associated with gasoline and diesel product spillage. To be eligible for
23 reimbursement, the following registration requirements shall be met:

24 4 Oil Discharge and Disposal Cleanup Fund Eligibility. Amend RSA 146-E:6, I to read as
25 follows:

26 I. The fund shall be available to owners of on-premise-use facilities, *or* owners of land upon
27 which on-premise-use facilities are *or were* located, [~~and~~] *owners of* bulk storage facilities as
28 defined in this chapter *or owners of land where such facilities were located*. The oil fund
29 disbursement board may adopt rules for administering disbursements from the fund using the same
30 rulemaking process and authorities established in RSA 146-D:5, I, including the development of

1 additional eligibility criteria. Owners of bulk storage facilities shall be liable to the fund for initial
2 cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-use facilities shall
3 be liable to the fund for the initial \$100 of cleanup costs at each facility owned, to the extent such
4 amount is expended from the fund, or for such lesser amount as is expended.

5 5 Motor Oil Discharge Cleanup Fund Eligibility. Amend RSA 146-F:5, I to read as follows:

6 I. The fund shall be available to owners of motor oil storage facilities, ~~and~~ *or* owners of
7 land ~~[upon which motor oil storage]~~ *where such* facilities ~~[are]~~ *were* located. The oil fund
8 disbursement board may adopt rules for administering disbursements from the fund using the same
9 rulemaking process and authorities established in RSA 146-D:5, I, including the development of
10 additional eligibility criteria. Owners of motor oil storage facilities shall be liable to the fund for
11 initial cleanup costs in the manner described in RSA 146-D:6, II.

12 6 Repeal.

13 I. RSA 146-E:6, VII, relative to transfer of fuel oil storage facility ownership, is repealed.

14 II. RSA 146-F:5, VIII relative to transfer of motor oil storage facility ownership.

15 7 Effective Date. This act shall take effect upon its passage.

HB 1292 - AS AMENDED BY THE HOUSE

27Jan2010... 0226h
24Mar2010... 0560h

2010 SESSION

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HOUSE BILL **1292**

AN ACT relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

SPONSORS: Rep. C. Christensen, Hills 19; Rep. Webb, Merr 2

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill:

I. Removes provisions necessitating periodic re-issuance of underground storage tank facility permits and removes provisions which limit transfer of oil cleanup fund coverage.

II. Makes owners of eligible facilities liable for the lesser of the initial \$500 of cleanup costs or the balance of the cleanup cost.

III. Allows moneys of eligible facilities with financial difficulty to have a reduced liability.

Explanation: Matter added to current law appears in **bold italics**.
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4 this section shall be displayed on the premises of the underground storage facility at all times.
5 [~~Permits shall be valid for a period of 5 years.~~]

6 2 Underground Storage Facility Compliance; Appeals. Amend RSA 146-C:16, I(c)(2) to read as
7 follows:

8 (2) The department shall inspect the underground storage tank or facility within
9 5 business days of notification to determine whether the tank or facility is now in compliance with
10 department rules, regardless of whether it has authorized removal of the red tag by the owner or
11 operator. If, upon inspection, the department determines that the system is [~~not~~] in compliance and
12 the department has not already authorized the removal of the red tag, the department shall
13 immediately remove the red tag.

14 3 Oil Discharge and Disposal Cleanup Fund Eligibility. RSA 146-D:6, I and the introductory
15 paragraph of RSA 146-D:6, I-a, are repealed and reenacted to read as follows:

16 I. The oil discharge and disposal cleanup fund shall be available to owners of underground
17 storage facilities which are in compliance with this chapter, RSA 146-C, and department rules, or
18 owners of land where compliant facilities were located.

19 I-a. The oil discharge and disposal cleanup fund shall be available to owners of bulk storage
20 facilities which are in compliance with this chapter and all applicable federal and state
21 requirements, or owners of land where compliant facilities were located. Reimbursements shall only
22 be made for costs of cleanup and third party damages associated with gasoline and diesel product
23 spillage. For owners of bulk storage facilities to be eligible for reimbursement, the following
24 registration requirements shall be met:

25 4 Liability for Initial Cleanup Costs. Amend RSA 146-D:6, II(a), by inserting after
26 subparagraph (4) the following new subparagraph:

27 (5) The owner of land where compliant facilities were located shall be responsible for
28 the lesser of the initial \$5,000 of cleanup costs at each location owned or the balance of the prior

1 facility owner's initial cleanup cost liability at each such location.

2 5 Oil Discharge and Disposal Cleanup Fund Eligibility. Amend RSA 146-D:6, III-IV to read as
3 follows:

4 III. Owners of facilities *or land* eligible under this chapter may apply for reimbursement of
5 court-ordered damages to third parties for bodily injury or property damage, and for the costs of
6 onsite and off-site cleanup of oil discharges in amounts not to exceed a total of \$1,500,000. The fund
7 shall be deemed excess insurance over any other valid and collectible insurance for the costs of
8 cleanup and damages to third parties. There shall be no right of recovery against the fund for
9 payments made under other insurance.

10 IV. Owners of facilities *or land* eligible under this chapter may apply for reimbursement for
11 costs of cleanup and third party damages incurred on or after July 1, 1988.

12 6 Fuel Oil Discharge Cleanup Fund Eligibility. RSA 146-E:6, I is repealed and reenacted to
13 read as follows:

14 I. The fuel oil discharge cleanup fund shall be available to owners of on-premise-use
15 facilities and bulk storage facilities which are in compliance with this chapter, or owners of land
16 where compliant bulk storage facilities were located, or owners of land where compliant on-premise-
17 use facilities are or were located. The oil fund disbursement board may adopt rules for
18 administering disbursements from the fund using the same rulemaking process and authorities
19 established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of
20 bulk storage facilities or land where compliant bulk storage facilities were located shall be liable to
21 the fund for initial cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-
22 use facilities or land where compliant on-premise-use facilities are or were located shall be liable to
23 the fund for the lesser of the initial \$500 of cleanup costs or the balance of the prior owner's initial
24 cost liability, to the extent such amount is expended from the fund, or for such lesser amount as is
25 expended.

26 7 Fuel Oil Discharge Cleanup Fund Initial Cleanup Costs. Amend RSA 146-E, 6, II to read as
27 follows:

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

HB 1292 - AS AMENDED BY THE HOUSE

- Page 3 -

1 8 Motor Oil Discharge Cleanup Fund Eligibility. RSA 146-F:5, I is repealed and reenacted to
2 read as follows:

3 I. The motor oil discharge cleanup fund shall be available to owners of motor oil storage
4 facilities which are in compliance with this chapter, or owners of land where compliant facilities
5 were located. The oil fund disbursement board may adopt rules for administering disbursements
6 from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I,
7 including the development of additional eligibility criteria. Owners of motor oil storage facilities or
8 land where compliant facilities were located shall be liable to the fund for initial cleanup costs in the
9 manner described in RSA 146-D:6, II.

10 9 Repeal.

11 I. RSA 146-E:6, VII, relative to transfer of fuel oil storage facility ownership, is repealed.

12 II. RSA 146-F:5, VIII relative to transfer of motor oil storage facility ownership, is repealed.

13 10 Effective Date. This act shall take effect upon its passage.

New

LBAO
10-2050
Amended 03/30/10

HB 1292 FISCAL NOTE

AN ACT relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

FISCAL IMPACT:

The Legislative Budget Assistant has determined that this legislation, **as amended by the House (Amendment #2010-0560h)**, has a total fiscal impact of less than \$10,000 in each of the fiscal years 2010 through 2014.

CHAPTER 55
HB 1292 - FINAL VERSION

27Jan2010... 0226h
24Mar2010... 0560h
28Apr2010... 1568eba

2010 SESSION

10-2050
08/10

HOUSE BILL **1292**

AN ACT relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

SPONSORS: Rep. C. Christensen, Hills 19; Rep. Webb, Merr 2

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill:

I. Removes provisions necessitating periodic re-issuance of underground storage tank facility permits and removes provisions which limit transfer of oil cleanup fund coverage.

II. Makes owners of eligible facilities liable for the lesser of the initial \$500 of cleanup costs or the balance of the cleanup cost.

III. Allows moneys of eligible facilities with financial difficulty to have a reduced liability.

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CHAPTER 55
HB 1292 – FINAL VERSION

27Jan2010... 0226h
24Mar2010... 0560h
28Apr2010... 1568eba

10-2050
08/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

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

1 55:1 Underground Storage Facility Permits. Amend RSA 146-C:4, II to read as follows:

2 II. The department shall issue or deny a permit to all facilities registered under RSA 146-
3 C:3 within 90 days of the receipt of the complete registration information. A permit issued under
4 this section shall be displayed on the premises of the underground storage facility at all times.
5 [~~Permits shall be valid for a period of 5 years.~~]

6 55:2 Underground Storage Facility Compliance; Appeals. Amend RSA 146-C:16, I(c)(2) to read
7 as follows:

8 (2) The department shall inspect the underground storage tank or facility within
9 5 business days of notification to determine whether the tank or facility is now in compliance with
10 department rules, regardless of whether it has authorized removal of the red tag by the owner or
11 operator. If, upon inspection, the department determines that the system is [~~not~~] in compliance and
12 the department has not already authorized the removal of the red tag, the department shall
13 immediately remove the red tag.

14 55:3 Oil Discharge and Disposal Cleanup Fund Eligibility. RSA 146-D:6, I and the introductory
15 paragraph of RSA 146-D:6, I-a are repealed and reenacted to read as follows:

16 I. The oil discharge and disposal cleanup fund shall be available to owners of underground
17 storage facilities which are in compliance with this chapter, RSA 146-C, and department rules, or
18 owners of land where compliant facilities were located.

19 I-a. The oil discharge and disposal cleanup fund shall be available to owners of bulk storage
20 facilities which are in compliance with this chapter and all applicable federal and state
21 requirements, or owners of land where compliant facilities were located. Reimbursements shall only
22 be made for costs of cleanup and third party damages associated with gasoline and diesel product
23 spillage. For owners of bulk storage facilities to be eligible for reimbursement, the following
24 registration requirements shall be met:

25 55:4 Liability for Initial Cleanup Costs. Amend RSA 146-D:6, II(a), by inserting after
26 subparagraph (4) the following new subparagraph:

27 (5) The owner of land where compliant facilities were located shall be responsible for

CHAPTER 55
HB 1292 - FINAL VERSION
- Page 2 -

1 the lesser of the initial \$5,000 of cleanup costs at each location owned or the balance of the prior
2 facility owner's initial cleanup cost liability at each such location.

3 55:5 Oil Discharge and Disposal Cleanup Fund Eligibility. Amend RSA 146-D:6, III-IV to read
4 as follows:

5 III. Owners of facilities *or land* eligible under this chapter may apply for reimbursement of
6 court-ordered damages to third parties for bodily injury or property damage, and for the costs of
7 onsite and off-site cleanup of oil discharges in amounts not to exceed a total of \$1,500,000. The fund
8 shall be deemed excess insurance over any other valid and collectible insurance for the costs of
9 cleanup and damages to third parties. There shall be no right of recovery against the fund for
10 payments made under other insurance.

11 IV. Owners of facilities *or land* eligible under this chapter may apply for reimbursement for
12 costs of cleanup and third party damages incurred on or after July 1, 1988.

13 55:6 Fuel Oil Discharge Cleanup Fund Eligibility. RSA 146-E:6, I is repealed and reenacted to
14 read as follows:

15 I. The fuel oil discharge cleanup fund shall be available to owners of on-premise-use
16 facilities and bulk storage facilities which are in compliance with this chapter, or owners of land
17 where compliant bulk storage facilities were located, or owners of land where compliant on-premise-
18 use facilities are or were located. The oil fund disbursement board may adopt rules for
19 administering disbursements from the fund using the same rulemaking process and authorities
20 established in RSA 146-D:5, I, including the development of additional eligibility criteria. Owners of
21 bulk storage facilities or land where compliant bulk storage facilities were located shall be liable to
22 the fund for initial cleanup costs in the manner described in RSA 146-D:6, II. Owners of on-premise-
23 use facilities or land where compliant on-premise-use facilities are or were located shall be liable to
24 the fund for the lesser of the initial \$500 of cleanup costs or the balance of the prior owner's initial
25 cost liability, to the extent such amount is expended from the fund, or for such lesser amount as is
26 expended.

27 55:7 Fuel Oil Discharge Cleanup Fund Initial Cleanup Costs. Amend RSA 146-E:6, II to read as
28 follows:

29 II. Owners of facilities or land eligible under this chapter may apply for reimbursement of
30 court-ordered damages to third parties for bodily injury or property damage, and for the costs of on-
31 site and off-site cleanup of fuel oil discharges in amounts not to exceed a total of \$500,000, incurred
32 on or after October 1, 1992. Owners of on-premise-use facilities or land eligible under this chapter
33 who have demonstrated financial need, may apply for reimbursement of costs to meet the
34 requirements of RSA 146-E:4, I and II in amounts not to exceed a total of \$1,500 and may apply for
35 reimbursement of underground storage tank abandonment or removal costs in amounts not to exceed
36 a total of \$2,500, incurred on or after the effective date of this paragraph. *For such owners who*

CHAPTER 55
HB 1292 – FINAL VERSION
- Page 3 -

1 *have demonstrated financial need, the amount of initial cleanup cost liability under*
2 *paragraph I of this section shall be reduced to \$100.*

3 55:8 Motor Oil Discharge Cleanup Fund Eligibility. RSA 146-F:5, I is repealed and reenacted to
4 read as follows:

5 I. The motor oil discharge cleanup fund shall be available to owners of motor oil storage
6 facilities which are in compliance with this chapter, or owners of land where compliant facilities
7 were located. The oil fund disbursement board may adopt rules for administering disbursements
8 from the fund using the same rulemaking process and authorities established in RSA 146-D:5, I,
9 including the development of additional eligibility criteria. Owners of motor oil storage facilities or
10 land where compliant facilities were located shall be liable to the fund for initial cleanup costs in the
11 manner described in RSA 146-D:6, II.

12 55:9 Repeal. The following are repealed:

13 I. RSA 146-E:6, VII, relative to transfer of fuel oil storage facility ownership.

14 II. RSA 146-F:5, VIII relative to transfer of motor oil storage facility ownership.

15 55:10 Effective Date. This act shall take effect upon its passage.

16 Approved: May 18, 2010

17 Effective Date: May 18, 2010

Committee Minutes

SENATE CALENDAR NOTICE
ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT

Senator Martha Fuller Clark Chairman ✓
 Senator Amanda Merrill V Chairman ✓
 Senator Jacalyn Cilley ✓
 Senator Bette Lasky ✓
 Senator Bob Odell ✓
 Senator Jeb Bradley ✓

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

10:12 open
 10:26 close
HEARINGS

Date: April 1, 2010

Thursday

4/8/2010

ENERGY, ENVIRONMENT AND ECONOMIC DEVELOPMENT LOB 102 8:30 AM

(Name of Committee) (Place) (Time)

EXECUTIVE SESSION MAY FOLLOW

8:30 AM	HB1153	relative to membership of the commission to study water infrastructure sustainability funding.
8:35 AM	HB431-FN	requiring certain engine coolants and antifreeze to include an aversive agent so that they are rendered unpalatable.
8:55 AM	HB1542-FN	repealing nitrogen oxide emitting generation source requirements.
9:15 AM	HB232-FN	(New Title) increasing manufacturers' pesticide registration fees.
9:30 AM	HB1292-FN	relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.
9:50 AM	HB1353	relative to group net energy metering.

Sponsors:

HB1153

Rep. Karen Umberger

Rep. Thomas Buco

Sen. Martha Fuller Clark

HB431-FN

Rep. Mary Gile

Sen. Sheila Roberge

Sen. Sharon Carson

Rep. Frank Davis

Rep. Mary Cooney

Rep. Jayne Spaulding

Rep. Carla Skinder

HB1542-FN

Rep. Naida Kaen

HB232-FN

Rep. Stella Scamman

HB1292-FN

Rep. Chris Christensen

Rep. Leigh Webb

HB1353

Rep. Suzanne Harvey

Sen. Martha Fuller Clark

Sen. Amanda Merrill

Rep. Beatriz Pastor

Rep. Suzanne Butcher

Rep. Charles Townsend

Energy, Environment and Economic Development Committee

Hearing Report

TO: Members of the Senate

FROM: Michael Rollo, *Legislative Aide*

RE: Hearing report on **HB 1292-FN** -An act relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

HEARING DATE: April 8, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Fuller Clark, Merrill, Lasky, Odell, and Bradley.

MEMBERS OF THE COMMITTEE ABSENT: Senator Cilley.

Sponsor(s): Rep. C. Christensen, Hills 19; Rep. Webb, Merr 2

What the bill does: This bill:

I. Removes provisions necessitating periodic re-issuance of underground storage tank facility permits and removes provisions which limit transfer of oil cleanup fund coverage.

II. Makes owners of eligible facilities liable for the lesser of the initial \$500 of cleanup costs or the balance of the cleanup cost.

III. Allows moneys of eligible facilities with financial difficulty to have a reduced liability.

Who supports the bill: Rep. Almy, Graf. 11, Rep. Christensen, Hills. 19, Timothy Denison, NH DES, Mike Wimsatt, NH DES.

Who opposes the bill: Rep. Skinder, Sull.1,

Neutral position: None.

Summary of testimony received:

Rep. Christensen, Hills. 19- Prime Sponsor of HB 1292-FN

- Hearing called to order at 10:08am
- Sen. Fuller Clark noted that HB 1292-FN has a new fiscal.
- Bill is a request of DES and Oil Disbursement Fund.
- Changes made by the House will not increase operating costs to the department.
- Bill broken down into three sections.
 - Removes provisions necessitating periodic re-issuance of underground storage tank facility permits and removes provisions which limit transfer of oil cleanup fund coverage.
 - Makes owners of eligible facilities liable for the lesser of the initial \$500 of cleanup costs or the balance of the cleanup cost.
 - Allows moneys of eligible facilities with financial difficulty to have a reduced liability.
- Banks may be reluctant to make loans if liability is too high, this is covered under section 3.

Mike Wimsatt, NH DES

- In support.
- Sees eligibility for reimbursement as a chance for economic development.
- Sen. Cilley asked if subsequent owners would be protected. If previous owners made efforts towards proper containment then new owners would be eligible. Mr. Wimsatt explained that new owners had a responsibility for closing out the old tanks.
- Sen. Cilley asked if there were any provisions in property transfers so people would know about eligibility. Mr. Wimsatt replied that there were not, it was the responsibility of the purchaser to make due diligence to check.

Hearing was closed at 10:20am.

Funding:

The Legislative Budget Assistant has determined that this legislation, **as amended by the House (Amendment #2010-0560h)**, has a total fiscal impact of less than \$10,000 in each of the fiscal years 2010 through 2014.

Future Action: Senator Cilley moved Ought to Pass on HB 1292. Seconded by Senator Merrill. Motion carried, 6-0. Senator Cilley for the committee.

MSR

File: HB 1292
Date: April 8, 2010

ML

Date: April 8, 2010
Time: 10:12 a.m.
Room: LOB Room 102

The Senate Committee on Energy, Environment and Economic Development held a hearing on the following:

House Bill 1292-FN relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.

Members of Committee present: Senator Fuller Clark
Senator Merrill
Senator Cilley
Senator Lasky
Senator Odell
Senator Bradley

The Chair, Senator Martha Fuller Clark, opened the hearing on House Bill 1292-FN and invited the prime sponsor, Representative Chris Christensen, to introduce the legislation.

Senator Martha Fuller Clark, D. 24: And just for the Committee, before you start, I have now a new fiscal note, which says that the Legislative Budget Assistant has determined that this legislation, as amended by the House, has a total fiscal impact of less than \$10,000 in each of fiscal years 2010 through 2014. Welcome.

Representative Chris Christensen: Thank you. Good morning, Madam Chair, members of the Committee. We do have ... This bill is at the request of the Department of Environmental Services and the Oil Fund Disbursement Board, of which I am the Chair, and we do have a joint letter of testimony that I believe is being passed out now. Is that correct?

Please see Attachment #1 – Letter of testimony.

Senator Martha Fuller Clark, D. 24: Yes, it is.

Representative Christensen: Thank you very much. So, for the record, I'm Representative Chris Christensen, representing the town of Merrimack,

which is Hillsborough District 19, and as noted, I'm also the Chair of the Oil Fund Disbursement Board. And this bill has to do with several of the funds overseen by that body.

The first item we're covering is to delete the requirement for underground storage tank permit renewals. In sum, the renewal process doesn't gain us anything except some extra paperwork. We send ... DES sends inspectors out on a routine basis to examine and make sure that facilities are in compliance. The permit process doesn't bring us any new information, and we think that the use of staff to go out and do more inspections would be more beneficial than having them sit in the office and push the renewal paperwork. So, we'd like to delete that requirement.

There's a second item that has to do with a technical correction to clarify the language related to what we refer to as red tags. A red tag is a sticker put on a non-compliant facility and making it ... notifying people that it is illegal to refill or operate that facility until it has been brought into compliance.

The third issue, if you will, has to do with transferability of eligibility for fund benefits, if you want to think of it that way. At this point in time, benefits eligibility rides with the owner of the facility in question. There are some facilities that - and it's a very small number - that we believe it would make sense to ... for the current owner who may be elderly, for example, to be able to sell and transfer eligibility for funds along with that. One of the examples we find is, even though a site may have been cleaned up, it may still be in monitoring. And banks and other financial institutions are reluctant to fund loans to new purchasers if the purchases means that the eligibility for the fund goes away. And yet, we still have to maintain our goal. Once we've done the initial clean-up is to get these sites back under the tax rules, get them back to being productive, both in terms of local property tax and business profits tax. So, that's the thrust of that transferability issue.

And the last issue is to increase the FOD fund, which is fuel oil as you might use in your home. The deductible currently is \$100 on that for anybody making a claim or asking for reimbursement. We would like to increase that to \$500. We think that'll save us about \$55,000, \$57,000 a year. And that money would be transferred. Not transferred, but used in the safe tank program, which is a means of upgrading facilities - oil tanks, if you will - for low income families. And the low income families, having met the low income criteria under this amendment, would still have the existing \$100 deductible, but everybody else would go to \$500.

I am accompanied by staff from the Department of Environmental Services, but there are others who wish to testify, but I would suggest we hold most

questions. I mean, I'm ready for questions, but if you want to wait until we've heard from DES, that's acceptable as well.

Senator Martha Fuller Clark, D. 24: Thank you very much. Just one question that I have is it's my understanding, then, that part of this bill would change the premise for eligibilities for funds going forward so that it would go with the property and not with the owner. Is that correct or does it just transfer to the new owner?

Representative Christensen: No, I think your summary is good.

Senator Martha Fuller Clark, D. 24: Okay. Thank you. Other questions? Seeing none, we'll move on. Representative Almy.

Representative Susan Almy: (Speaking from the back of the room) I said I would only...

Senator Martha Fuller Clark, D. 24: If needed?

Representative Almy: (Speaking from the back of the room) ...speak if needed.

Senator Martha Fuller Clark, D. 24: Okay. Okay. We'll wait then and see if people have a question. All right. Could I hear from Mike Winsatt from DES? Good morning.

Mike Winsatt, Department of Environmental Services: Good morning, Senator.

Senator Martha Fuller Clark, D. 24: I'm not sure I pronounced your name correctly. I apologize.

Mr. Winsatt: That's correct: Winsatt is the right...

Senator Martha Fuller Clark, D. 24: Okay.

Mr. Winsatt: ...pronunciation. Thank you, Madam Chair. For the record, my name is Mike Winsatt, director of the Waste Management Division in the Department of Environmental services. I think Senator ... Representative Christensen gave a good summary of the provisions of the bill. I guess I would augment a little bit what he had to say about the transferability issue in the sense that ... We sort of look at this provision of the bill as more or less an economic development provision, if you will, because these are sites that are already in the system. They are eligible for reimbursement at present.

However, because the ... For this about thirty-two sites that we've been able to identify that are in the system that are receiving eligibility, receiving reimbursement for work done to address contamination, because the tanks on those sites were closed prior to these dates in the statute, if the owners were to die or to just cease becoming willing - ceased to be willing to, essentially - oversee the clean-up, those sites would no longer be eligible for reimbursement. And that would mean ... And I would, I guess, bring in an actual site as an example.

There was a site in Weare where a gentleman had done just that. He brought the tanks into compliance before the eligible dates and closed them out. There was clean-up work that had to be done. He incurred costs after the effective date of the funds and began. And thus, the sites under the current law became eligible for reimbursement. And work was on-going. He sold the site to his son. Because it was his son, he was willing to continue being the owner for the purposes of eligibility and continuing work, but then his son desired to sell the site. And this is a site that's laying fallow right now. It's an empty site that's not really generating tax revenue. It's a closed business.

The new, prospective purchaser, who came in with the intent of starting a business there, ran into a road block with her bank because the bank looked at it and said, "Well, we think the eligibility here is very at risk. And if you're not eligible for continued reimbursement from the funds, we don't want to extend financing for the property."

So, that is an example of how this provision ... provisions as currently written can be a disincentive for economic development. And again, it's a relatively small number of sites, but if you own one of those sites, you're interested in purchasing one of those sites, it's pretty important to you. So, we think the impact of this will be very modest - but in terms of impacts to the fund - but very potentially significant for the sites that are involved.

Senator Martha Fuller Clark, D. 24: Thank you. Are there any questions from the Committee? Senator Cilley.

Senator Jacalyn L. Cilley, D. 6: Thank you, Madam Chair. I just want to follow up on a question that Senator Fuller Clark asked, and I'm trying to find where it's very specific that it's whoever owns it, not ... I mean, I see, "...owners of facilities or land..." that would be eligible for these funds. So, is that how we're taking care of any subsequent owner?

Mr. Winsatt: In essence, if this provision of the bill were to pass, then there's still a strong tie to ownership of the tanks. You need to be able to

show there was a tank. You need to be able to show that it was closed and brought into compliance with your own funds. And then you need to show that you've incurred costs. But what this would do is, for sites where that was done but the owner has passed on or you can't find them, as long as you can demonstrate that the release was related to the tank - that's a fundamental tenet of the whole fund - and that the tank was compliant - means that it was closed, properly closed and under law - and then that the costs were incurred; then, if a new owner comes along and wants to be eligible, that transferability can happen.

Senator Jacalyn L. Cilley, D. 6: Follow up? So, what I'm asking, I guess, is, if you can show me where in this legislation it's very clear that if any subsequent owner ... If the property transfers...

Mr. Winsatt: Sure.

Senator Jacalyn L. Cilley, D. 6: ...because I'm just not picking that up.

Mr. Winsatt: I understand. I think the language you're looking for, if I could refer you to - let me get a copy of the bill that you're probably looking at - on line 20 and 21 of the bill.

Senator Jacalyn L. Cilley, D. 6: Of which page?

Mr. Winsatt: I'm sorry. Page ... The first page of the bill. I'm sorry; the second page. It's the first page of the...

Senator Martha Fuller Clark, D. 24: The actual language of the bill.

Mr. Winsatt: ...the actual language of the bill, correct. On line ... That paragraph starts at line 19. And so, this is an example of the oil discharge disposal clean up fund, which is the big ... the largest of these funds and the one with the most significant number of sites and costs associated with it. Forgive me, I'll read: "The oil discharge disposal cleanup fund shall be available to owners of bulk storage facilities which are in compliance with this chapter and all applicable federal and state requirements, or owners of land where compliant facilities were located." That's essentially where the change is. That term, "where compliant facilities were located".

Senator Jacalyn L. Cilley, D. 6: Are or were located.

Mr. Winsatt: Right.

Senator Jacalyn L. Cilley, D. 6: So, that's what...

Senator Martha Fuller Clark, D. 24: So, say it's line 28.

Senator Jacalyn L. Cilley, D. 6: Well, I'm getting line 17...

Mr. Winsatt: Yeah, I'm sorry. It occurs in a number of places for different funds, Madam Chair.

Senator Martha Fuller Clark, D. 24: Okay, line 17.

Senator Jacalyn L. Cilley, D. 6: On page 2.

Senator Martha Fuller Clark, D. 24: Yep.

Senator Jacalyn L. Cilley, D. 6: On page 2.

Senator Martha Fuller Clark, D. 24: Yep, okay. That's true, too. I get it.

Mr. Winsatt: And actually, I could have easily said lines 16 through 18, because it's, again ... We're dealing with a series of funds and eligibility provisions here, so it occurs multiple times...

Senator Martha Fuller Clark, D. 24: Three times.

Mr. Winsatt: ...in the bill.

Senator Martha Fuller Clark, D. 24: At least three.

Mr. Winsatt: But that's essentially the language that's being added here to allow for this transferability.

Senator Martha Fuller Clark, D. 24: So, just to pick up on my question, then. Actually, it doesn't go with the land; it goes with the ... to the owners of land where facilities were located. So, it still stays with the individual and not with the land itself. Is that correct?

Mr. Winsatt: That's correct.

Senator Martha Fuller Clark, D. 24: Okay.

Mr. Winsatt: And there's still a requirement that the original owner of the property closed the tanks out. That's still an important provision.

me

Senator Martha Fuller Clark, D. 24: Thank you. Are there any further questions? Thank you. I'd like to call upon Tim Denison.

Tim Denison, Department of Environmental Services: (Speaking from the back of the room) I don't have anything to add, Madam Chair, but thank you.

Senator Martha Fuller Clark, D. 24: Thank you very much. Okay.

Senator Jacalyn L. Cilley, D. 6: Sorry, Mr. Winsatt.

Mr. Winsatt: Yes. Oh, not at all.

Senator Jacalyn L. Cilley, D. 6: Just one more question. Is there some provision that, either in the deed or when the property transfers, that a new owner would know this? I'm just trying to figure out how this all gets conveyed to somebody who purchases a property.

Mr. Winsatt: I don't believe there's any language in the deed. We don't administer this program by putting any language in deeds to demonstrate or confirm eligibility. What generally happens is that a prospective purchaser comes. If they're doing appropriate due diligence, they're going to learn that they have a site where there was either an existing or past presence of contamination in tanks. And then, they do their record search at the Department, which most folks purchasing commercial property will do. They will learn probably more than they wanted to know about the history of that site. And so, then that becomes an important aspect of the financial condition of the property and there's a need for them to ensure that they have that eligibility. And as happened in Weare, both prospective purchaser and the bank were very aware of those concerns, and it was essentially scuttling the deal.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Martha Fuller Clark, D. 24: Thank you very much. If there's no one else who wishes to speak on House Bill 1292, I will close the hearing.

Hearing concluded at 10:26 a.m.

Respectfully submitted,



Marty Cote
Senate Secretary

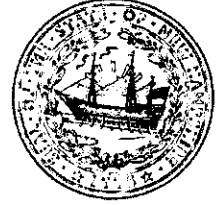
6/29/10

1 Attachment



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner



Attachment #7

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.

DES Web Site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-2900 Fax: (603) 271-2456 TDD Access: Relay NH 1-800-735-2964

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

Speakers

Voting Sheets

Senate Energy, Environment & Economic Development Committee EXECUTIVE SESSION

Bill # HB 1292-FN

Hearing date: 4/8/10

Executive session date: 4/8/10

Motion of: OTP

VOTE: 6-0

Made by
Senator:

Fuller Clark	<input type="checkbox"/>
Merrill	<input type="checkbox"/>
Lasky	<input type="checkbox"/>
Cilley	<input checked="" type="checkbox"/>
Odell	<input type="checkbox"/>
Bradley	<input type="checkbox"/>

Seconded
by Senator:

Fuller Clark	<input type="checkbox"/>
Merrill	<input checked="" type="checkbox"/>
Lasky	<input type="checkbox"/>
Cilley	<input type="checkbox"/>
Odell	<input type="checkbox"/>
Bradley	<input type="checkbox"/>

Reported
by Senator:

Fuller Clark	<input type="checkbox"/>
Merrill	<input type="checkbox"/>
Lasky	<input type="checkbox"/>
Cilley	<input checked="" type="checkbox"/>
Odell	<input type="checkbox"/>
Bradley	<input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Fuller Clark, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Merrill, Vice-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Cilley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Odell	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Bradley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 8, 2010

THE COMMITTEE ON Energy, Environment and Economic Development
to which was referred House Bill 1292-FN

AN ACT relative to underground storage tank facility permits,
compliance, and cleanup fund eligibility.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 6 - 0

AMENDMENT # s

Senator Jacalyn L. Cilley
For the Committee

Marty Cote 271-3045

New Hampshire General Court - Bill Status System

Docket of HB1292

Docket Abbreviations

Bill Title: relative to underground storage tank facility permits, compliance, and cleanup fund eligibility.*Official Docket of HB1292:*

Date	Body	Description
01/06/2010	H	Introduced and Referred to Resources, Recreation and Development; HJ 6 , PG.235
01/06/2010	H	Public Hearing: 1/7/2010 10:00 AM LOB 305
01/13/2010	H	Executive Session: 1/21/2010 9:00 AM LOB 305
01/21/2010	H	Committee Report: Ought to Pass with Amendment #0226h for Jan 27 CC (vote 16-0); HC 8 , PG.335
01/21/2010	H	Proposed Committee Amendment #0226h; HC 8 , PG.360
01/27/2010	H	Amendment #0226h Adopted, VV; HJ 12 , PG.505-506
01/27/2010	H	Ought to Pass with Amendment #0226h: MA VV; HJ 12 , PG.505-506
01/27/2010	H	Referred to Ways and Means; HJ 12 , PG.506
02/02/2010	H	Public Hearing: 2/9/2010 10:30 AM LOB 202
02/17/2010	H	Subcommittee Work Session: 3/4/2010 9:00 AM LOB 202
03/10/2010	H	Executive Session: 3/16/2010 10:00 AM LOB 202
03/16/2010	H	Committee Report: Ought to Pass with Amendment #0560h for Mar 24 (Vote 19-1; CC); HC 22 , PG.1221
03/16/2010	H	Proposed Committee Amendment #0560h; HC 22 , PG.1238
03/24/2010	H	Amendment #0560h Adopted, VV; HJ 30 , PG.1477-1478
03/24/2010	H	Ought to Pass with Amendment #0560h: MA VV; HJ 30 , PG.1477-1478
03/24/2010	S	Introduced and Referred to Energy, Environment and Economic Development; SJ 11 , Pg.261
04/01/2010	S	Hearing: April 8, 2010, Room 102, LOB, 9:30 a.m.; SC14
04/08/2010	S	Committee Report: Ought to Pass 4/14/10; SC15
04/14/2010	S	Without Objection, Chair moved to Special Order to the end of the Calendar; SJ 14 , Pg.287
04/14/2010	S	Ought to Pass, MA, VV; OT3rdg; SJ 14 , Pg.295
04/14/2010	S	Passed by Third Reading Resolution; SJ 14 , Pg.296
04/28/2010	H	Enrolled Bill Amendment #1568 Adopted; HJ 36 , PG.1730
04/28/2010	S	Enrolled Bill Amendment #1568 Adopted
05/05/2010	S	Enrolled
05/05/2010	H	Enrolled; HJ 38 , PG.1914
05/24/2010	H	Signed by the Governor 05/18/2010; Effective 05/18/2010; Chapter 0055

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB1292 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: Attachment #1

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

___ - AMENDMENT # ___ - AMENDMENT #
___ - AMENDMENT # ___ - AMENDMENT #

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION ___ AS AMENDED BY THE SENATE

___ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

New Fiscal Note amended 3/30/10

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

6/30/10

Marilyn Goffe
COMMITTEE SECRETARY