

PA10-086

HB5119

Environment	77-83, 116-117, 130-132, 144-166, 202-212, 247, 263-264,	50
House	1472-1477	6
Senate	3540, 3550-3552	4
		60

**H – 1077**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2010**

**VOL.53  
PART 5  
1169 – 1557**

rgd/gbr  
HOUSE OF REPRESENTATIVES

116  
April 22, 2010

Is there any objection? Is there any objection?

Hearing none, it is so ordered.

Would the Clerk please call Calendar 261.

THE CLERK:

On page 27, Calendar 261, Substitute for House Bill Number 5465, AN ACT CONCERNING THE DEVELOPMENT OF GREEN JOBS, favorable report by the Committee on Higher Education.

DEPUTY SPEAKER McCLUSKEY:

Representative Hewett.

REP. HEWETT (39th):

Mr. Speaker, I move that this bill be referred to the Labor Committee.

DEPUTY SPEAKER McCLUSKEY:

Is there any objection? Is there any objection?

Hearing none, it is so ordered.

REP. HEWETT (39th):

Thank you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Will the Clerk now call Calendar 144.

THE CLERK:

On page 23, Calendar 144, Substitute for House Bill Number 5119, AN ACT CONCERNING THE REMEDIATION ACCOUNT FOR DRY-CLEANING ESTABLISHMENTS, favorable

rgd/gbr  
HOUSE OF REPRESENTATIVES

117  
April 22, 2010

report by the Committee on Finance.

DEPUTY SPEAKER McCLUSKEY:

The honorable gentleman from Cromwell,  
Representative O'Rourke, you have the floor, sir.

REP. O'ROURKE (32nd):

Thank you, Mr. Speaker.

I move for acceptance of the joint committee's  
favorable report and passage of the bill.

DEPUTY SPEAKER McCLUSKEY:

The question before the chamber is acceptance of  
the joint committee's favorable report and passage of  
the bill. Will you remark?

REP. O'ROURKE (32nd):

Yes. Thank you, Mr. Speaker.

Numbers of the House, this is a very technical  
bill that clears up a, what is really a catch 22 in  
our statutes concerning the way the dry cleaner  
remediation account works.

Now that account, as you know, is set aside to  
clean up environmental contamination resulting from  
dry-cleaning activities of businesses. One of my  
constituents had such a dry cleaner at his property  
that contaminated his property. He applied to the  
fund and was granted a hundred thousand dollar cleanup

rgd/gbr  
HOUSE OF REPRESENTATIVES

118  
April 22, 2010

grant from the account.

And about halfway through the cleanup the dry cleaner left, went out of business. And because of the way the statutes were written, they were told to suspend cleanup activities.

This bill before us seeks to remedy that to say that if a dry cleaner was there within a year of the cleanup activity being approved and commenced, that that would be allowed to continue.

And Mr. Speaker, having explained the main part of the bill, the Clerk is in possession of LCO 3878. I'd ask the Clerk to please call that amendment and I be given leave of the Chamber to summarize.

DEPUTY SPEAKER McCLUSKEY:

Will the Clerk please call LCO 3878 to be designated House Amendment Schedule "A."

THE CLERK:

LCO 3878, House "A," offered by Representatives Representative O'Rourke, Berger, Roy and Chapin.

DEPUTY SPEAKER McCLUSKEY:

The Representative seeks leave of the Chamber to summarize the amendment. Is there any objection? Is there any objection? If not, sir, please summarize your amendment.

rgd/gbr  
HOUSE OF REPRESENTATIVES

119  
April 22, 2010

REP. O'ROURKE (32nd):

Thank you.

Very quickly, this technical amendment makes the bill effective from passage so that that clean up and other ones that may be affected can move forward expeditiously.

It removes a part of the language concerning updating machinery and equipment that was never intended to be in the bill in the first place. It was actually an artifact from a draft of another bill that ended up in there. Not that it's a bad section, but it's something that we can hold for another day.

And finally, the last part of it allows a limited number of brownfields sites that have been involved in ongoing remediation efforts in our state to register regulated activities prospectively, to ensure that the remediation efforts can continue without negatively impacting the aquifers that they're sited in.

And with that, Mr. Speaker, I move adoption of this amendment.

REP. McCLUSKEY (20th):

The question before the Chamber is adoption of House "A." Will you remark? Will you remark on House "A?" If not, I'll try your minds. All those in favor

rgd/gbr  
HOUSE OF REPRESENTATIVES

120  
April 22, 2010

of House "A," please signify by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER McCLUSKEY:

All those opposed, nay.

Ayes have it. House "A" is adopted.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. Will members please take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

DEPUTY SPEAKER McCLUSKEY:

Have all the members voted? Have all the members voted? Will the members please check the board to determine if your vote has been properly cast. If all the members have voted, the machine will be locked. Will the Clerk please take and announce the tally.

THE CLERK:

House Bill Number 5119 as amended by House "A."

Total Number voting 141

rgd/gbr  
HOUSE OF REPRESENTATIVES

121  
April 22, 2010

Necessary for adoption	71
Those voting Yea	141
Those voting Nay	0
Those absent and not voting	10

DEPUTY SPEAKER McCLUSKEY:

The bill as amended is passed.

Will the Clerk please call Calendar 89.

THE CLERK:

On page 19, Calendar 89, Substitute for House  
Bill Number 5028, AN ACT CONCERNING THE DEVELOPMENT OF  
THE CREATIVE ECONOMY, favorable report of the  
Committee on Commerce.

DEPUTY SPEAKER McCLUSKEY:

The honorable Chair of the Higher Education  
Committee, Representative Willis, you have the floor,  
madam.

REP. WILLIS (64th):

Thank you very much, sir. Happy Earth Day.

Mr. Speaker, I move for the acceptance of the  
joint committee's favorable report and passage of the  
bill.

DEPUTY SPEAKER McCLUSKEY:

The question before the Chamber is acceptance of  
the joint committee's favorable report and passage of

**S - 608**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2010**

**VOL. 53  
PART 11  
3251 - 3554**

SENATOR LOONEY:

Thank you, Mr. President. Continuing on calendar page 12, Mr. President. Calendar 476, Substitute for House Bill Number 5117. Mr. President, I move to place that item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, moving to calendar page 13, Calendar 481, Substitute for House Bill Number 5119. Mr. President, move to place this item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Yes, thank you, Mr. President. Continuing on calendar page 13, Calendar 482, Substitute for House Bill Number 5120. Mr. President, move to place this item on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, moving to calendar page 15,

Bill 121; calendar page 7, Calendar 377, Substitute for House Bill 5291; Calendar page 8, Calendar 398, Substitute for Senate Bill 231; calendar page 9, Calendar 442, Substitute for House Bill 5141; calendar page 10, Calendar 449, House Bill 5495; calendar page 11, Calendar 451, Substitute for House Bill 5535; Calendar 465, Substitute for House Bill 44 -- 5448; calendar page 12, Calendar 466, Substitute for House Bill 5289; Calendar 473, Substitute for House Bill 5059; Calendar 476, Substitute for House Bill 5117; calendar page 13. Calendar 478, House Bill 5290; Calendar 481, Substitute for House Bill 5119; Calendar 482, Substitute for House Bill 5120; calendar page 15, Calendar 492, Substitute for House Bill 5446; Calendar 494, House Bill 5315; Calendar 504, Substitute for House Bill 5306; calendar page 20, Calendar 532, Substitute for House Bill 5033; calendar page 21, Calendar 534, Substitute for House Bill 5543; Calendar 539, Substitute for House Bill 5350; calendar page 25, Calendar 561, Substitute for House Bill 5419; calendar page 36, Calendar 374, Substitute for House Bill 5225; calendar page 37, Calendar 415, House Bill 5131; calendar page 38, Calendar 454, Substitute for House Bill 5526.

Mr. President, that completes the items placed on Consent Calendar Number 2.

THE CHAIR:

Please call for a roll call vote. The machine will be open.

THE CLERK:

The Senate is now voting by roll on the consent calendar. Will all Senators please return to the chamber. Senate is voting by roll on the consent calendar. Will all Senators please return to the chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is adoption of Consent Calendar Number 2.

Total number voting

35

Necessary for Adoption 18

Those voting Yea 35

Those voting Nay 0

Those absent and not voting 1

THE CHAIR:

Consent calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President.

Mr. President, I would move that any items on the consent calendar requires additional action by the House of Representatives be immediately transmitted to that chamber.

THE CHAIR:

Without objection, so ordered, sir.

SENATOR LOONEY:

And also any other items acted upon today, not on the consent calendar requiring action by the House of Representatives. Also would move that those items be immediately transmitted.

THE CHAIR:

Seeing no objection, sir, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, I would yield to any members seeking recognition for announcements or points of personal privilege.

THE CHAIR:

At this time, I will entertain any points of

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**ENVIRONMENT  
PART 1  
1 – 306**

**2010**

64

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

SENATOR MEYER: -- to Graham. Yeah.

The next witness is somebody we called before, was not in the room, Michelle Albasio. Is she here; Michelle Albasio?

A VOICE: Yes, she is.

SENATOR MEYER: There she is.

MICHELLE ALBASIO: Hi. I'm Michelle Albasio and I'm with Warren Equities in the trade petroleum.

HB5119

Warren Equities faces many challenges operating our stations in the State of Connecticut. We have a staff of approximately 14 environmental professionals, of which I am one. I would venture to state that the people in the Oil and Chemical Spills Division probably know me by name. We strive to ensure compliance with all state and federal regulations that govern the operation of underground storage tanks. We fight to overcome the effects that using low-sulfur diesel and gasoline that contains ethanol has on our equipment daily. The cost associated with repairing and placing -- and replacing of equipment because screws and gaskets are slowly decaying due to the use of additive -- additives are astronomical.

In addition, the constant battles on our stations -- that our on-site station personnel face attempting to get the public to understand why it's not okay to be talking on your cell phone, sitting in your car, shopping in the store, and sticking things in dispenser nozzles while fueling their vehicles -- all of which actually do occur -- is astronomical. (2) It seems inconceivable to think that we can lose

reimbursement because the public doesn't care or the additives we are forced to use have and can cause release as regard with the (inaudible).

While we are not here to discuss the -- the specifics of the laws currently in effect in the State of Connecticut regarding spill reporting, in brief, the requirements of the Department of Environmental Protection in Connecticut are the strictest in the ten states we do business in. The laws require that all retail petroleum distribution owner and operators report all suspect and known releases regardless of quantity of petroleum lost, locations of release and/or containment method to the Oil and Chemical Spills Division of the Connecticut DEP. The reporting of a release to the DEP emergency response dispatcher allows the Connecticut DEP to respond and provide direction as they see fit, regardless of whether or not we have an environmental consultant already at the property making a determination to the appropriate steps to clean up and investigate.

The new language literally states that if the Connecticut DEP to -- responds to a release at one of our stations, we will no longer be eligible for reimbursement. This language is too vague. It appears to indicate that if the DEP responds to a property during underground storage tank removal, off-property utility work or a founded or unfounded complaint from an off-site property owner, all of which commonly occur, we will no longer be eligible for reimbursement, regardless of whether or not the property is currently receiving reimbursement from the Underground Storage Tank Fund.

66

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

Just last week we had an incident at one of our stations during a USC compliance inspection where a leaky meter was identified in a contained sum -- sorry. Unfortunately, the DEP ordered the site personnel to call in a release and at that property we would have lost reimbursement. And the rest of my testimony is here. Sorry.

SENATOR MEYER: Thank you.

Are there any questions?

Thank you. Thank you. We -- we do have your full testimony.

MICHELLE ALBASIO: (Inaudible.)

SENATOR MEYER: Appreciate it.

MICHELLE ALBASIO: Thank you.

SENATOR MEYER: We'll next hear from the final DEP witness, Graham Stevens coming back.

GRAHAM STEVENS: Thank you, Mr. Chairman. Thank you, members of the Environment Committee.

I will try to be brief. I know we've been before you for a long time this morning, now into this afternoon. Again, for the record, my name is Graham Stevens. I'm the Chief of Staff of DEP, and I, too, as the last witness, I will be testifying on House Bill 5119, AN ACT CONCERNING MINOR REVISIONS TO THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND GROUNDWATER POLLUTION ABATEMENT STATUTES. It's a two-part bill. We believe that both sections

-- sections of this bill will provide a cost savings to the state.

First, and -- and relating to the underground storage tank petroleum clean-up account, our changes would ensure that funds available for cleanup of petroleum releases, primarily at gasoline stations, are not used by a responsible party to reimburse the state if and only if the state had to step up and perform clean-up activities because such responsible party failed to respond. And contrary to the previous testimony, I believe our intention is -- is not to bar someone to recover costs solely because DEP comes to the scene, which we do on a regular basis to deal with, like -- like that previous testimony, deal with utility issues as well as underground storage tank removal issues.

Here we are talking about a case where the DEP has to come to the scene, order the respondent or the responsible party, property owner, to undertake remedial actions; they're either unable, unwilling to do so in a timely manner, and DEP needs to retain at state expense a contractor to come onto a site to do that work. So this is the case where we're talking about, you know, barring that party from seeking reimbursement, solely to reimburse the state for the costs that we've had to incur, which, as you know, given our -- our staff -- staffing as well as the -- the specific reductions to the petroleum clean-up account that have occurred recently, we're both understaffed and underfunded in this regard, compared to previous years. This would allow the state to focus our resources on more critical activities and those where there is no

party responsible for a release.

In addition -- oh, I covered that; I'm sorry. A few amendments are needed to the bill to clarify that the program will continue to cover clean-up cost at all sites voluntarily reported to the department, and we would appreciate the opportunity to work with the committee on those changes.

And the second portion of this bill, which is much easier to -- to grasp is that we're seeking an amendment to the groundwater pollution abatement statute which would provide an efficient mechanism for the department to allow a homeowner to keep a filtration system that the department had previously installed on their drinking water well to filter contamination from their drinking water. After the department determines that the filter is no longer necessary or no longer subject to state monitoring and maintenance, some homeowners, actually many homeowners, wish to keep the filter for peace of mind.

Removal of this filter by the department is costly and its reuse is cost prohibitive, but it still could serve a function for the homeowner. Without this change, the department is removing these filters at a high cost, and many homeowners are then turning around and purchasing a similar filter and installing it also at a high cost. This bill would allow them to keep the DEP-installed filter for their own use.

And I'd be happy to take any questions on this bill.

69

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

SENATOR MEYER: Thank you, Mr. Stevens.

Are there any questions?

Representative Miller -- sorry --  
Representative Lambert.

REP. LAMBERT: Thank you, Mr. Chairman.

I -- I -- I've been reading in this now. It --  
there's no state liability if they choose to  
keep the filter system?

GRAHAM STEVENS: I, in -- in my opinion, I don't --  
I don't believe there will be a liability  
because the -- the state would be gifting the  
filter to the homeowner. Our primary concern  
is the -- the audit, the auditors looking at  
this as -- as a gift.

SENATOR MEYER: Thanks.

Representative Miller.

REP. MILLER: Thank you, Mr. Chairman.

Just by way of a oil spill so to reduce costs,  
has the department considered bacteria or  
microbes to deal with the small spills so that  
homeowners won't be burdened with a tremendous  
amount of expense by hiring a professional to  
do the work?

GRAHAM STEVENS: Yes. And -- and that -- that, I  
believe, pertains to a residential underground  
storage tank release, which in this case would  
be separate from the clean-up account because  
of the -- those -- those properties were  
excluded from that requirement because this

70

February 22, 2010

mhr/gbr

ENVIRONMENT COMMITTEE

10:30 A.M.

program is -- is required pursuant to a federal requirement. But in those cases, to address your question, the department does encourage alternative means of -- of remediation, some of which do take a little bit longer, but under certain circumstances where there's not an immediate risk, that -- that is something that we look into. And we look at promoting more of those green remediation technologies which will, again, expand the -- the green job sector here in Connecticut, hopefully.

SENATOR MEYER: Thank you, Representative Miller.

Are there any other questions?

Thanks, Mr. Stevens.

GRAHAM STEVENS: Thank you very much.

SENATOR MEYER: Good.

Our next witness from the public list will be Susan Linker, followed by Martin Mador and his clothesline, and Stan Sorkin.

SUSAN LINKER: -- testify. Can you not hear me?

SENATOR MEYER: Yeah, we can hear you.

SUSAN LINKER: Okay --

SENATOR MEYER: It's fine.

SUSAN LINKER: -- good.

Thank you for allowing me this opportunity to testify. On behalf of Connecticut Votes for

HB 5118

103  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

STAN SORKIN: Thank you.

REP. ROY: Mike Devino, followed by Greg Sharp.

MICHAEL DEVINO: Good afternoon.

My name is Michael Devino. Myself and my family run a petroleum distributorship in Connecticut. We run a chain of gas station convenience stores of our own and then we have about 80 family, single-store customers that buy from us.

I'm here to testimony against H.B. 5119. It talks about a minor revision to the State Tank Fund access. I don't consider any of the language minor at all.

Just in way of a little history, 'cause I've been doing this job for 39 years, and back in late '80s, early '90s, federal law required that gas station owners have at least a million dollars worth of underground insurance. This state, along with many of the others -- most of the other states -- recognized that the insurance would have been difficult to procure and so we came up with a State Tank Fund; it was funded by the Connecticut Gross Receipts Tax. That tax brings in \$400 million, approximately, per year. And only 4 million of it now goes to the State Tank Fund.

Through the years, we've had to try to access the fund, our company kind of modestly. I think we only went three or four times out of our 25 station that we have, and accessing the fund has always been onerous. There were all types of roadblocks that were put in front of

104

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

us. This further revision makes no sense to me at all. We return -- we routinely report to the DEP a spill or a -- an -- an event that needs to be investigated. To bar us from accessing the fund because we reported it, which was required, seems ludicrous to me.

I'm told that there may be a possible change to that language; I'm only here to speak on the way the language is written right now. But the proposed change would be that if the DEP demanded that we clean up a site and we didn't, we'd be barred from the fund. That's not acceptable either. There's many times when there's a -- and this, I don't know from my own personal experiences but many of my colleagues -- where you'll have a site at the, an intersection and there could be three or four potential suspects, and the DEP has been and -- and the individual have been mistaken sometimes and put the blame on the wrong person. So in this particular case, if -- if the DEP said to, let's say station number 1 at a four-way intersection, you're the culprit, you better clean up and they refuse to, and -- and then after subsequent litigation prove them to be innocent, this would bar -- would bar access to the fund.

I -- I think that the Legislature should try to help us get more access to the fund and not put a nail in the coffin.

REP. ROY: Thank you.

Any questions or comments from members of the committee?

Seeing none, thank you, Mike.

117

mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

Sciences Engineering to help explain all that.

And our final point is 5127, prevents the agency from adopting an Ozone Transport Commission rule without 60 days of public comment, period. We know there's a big one coming very shortly on above-ground storage tanks. We don't want to be told all the Northeast States signed into it, here's the rule, we adopted it. And again, there's no chance for a public hearing.

So in summary -- summary, these are reasonable requests. They're not substantive in nature. They go to the process of rule writing, and we ask for your support.

So thank you.

REP. ROY: Thank you.

Any questions or comments from members of the committee?

Good job, Steve.

STEVE GUYEVAN: Thank you very much.

REP. ROY: All set.

STEVE GUYEVAN: Thank you.

REP. ROY: Abner, followed by Todd Berman.

ABNER BURGOS-RODRIGUEZ: Good afternoon,  
Mr. Chairman and members of the Environmental  
Committee.

My name is Abner Burgos-Rodriguez. I work for

HB5119

118

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

Standard Oil of Connecticut that is a family owned petroleum distributor, located in Bridgeport, Connecticut. I'm here today in opposition to House Bill 5119, AN ACT CONCERNING A MINOR REVISION TO THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND THE UNDERWATER POLLUTION ABATEMENT STATUTE.

The title of this bill includes word -- the words "minor revision." Let me explain to you how major this bill is. If underground's petroleum storage tank -- if an underground petroleum storage tank has a suspected leak, the owner is compelled by law to contact DEP. Under this bill, in the event that DEP responds to the suspected leak, it would not allow tank owner to apply to the program that helps it clean up the -- maintain the environment clean. If I had to come up with a definition of the opposite of major -- minor revision, H.B. 5119 would be it. If proposing a bill that would prohibit the local, a local Connecticut family owned company to access a program that they pay into is considered minor, I would hate to see what a major revision is.

If our tanks are in compliance with the law, our taxes are all paid up, and we are not negligent, we would be -- we should not be barred from utilizing the tank program to help us keep the environmental -- environment clean, our gas stations open, and our employees work -- working. House Bill 5119 would end all that -- that, just in the event that DEP suspected that there was a leak or showed up. I ask this committee to please oppose H.B. 519 -- 5119.

Thank you.

119  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

REP. ROY: Thank you, sir.

Any questions for Mr. Rodriguez, from anybody -  
- from anyone on the committee?

Seeing none, thank you very much, sir.

ABNER BURGOS-RODRIGUEZ: Thank you.

REP. ROY: Todd Berman, followed by Roger Reynolds.

TODD BERMAN: Well, I had hoped to say good morning,  
but good afternoon. My name is Todd Berman.  
I've been an environmental analyst working in  
Hartford for 15 years. I'm not here on behalf  
of any client or anything like that; I'm  
speaking as a resident of Connecticut for 40  
years. I live in Killingworth.

And I'm here to testify on Senate Bill 120.  
It's what we've -- we've been kicked around  
already this morning. It's the use of guidance  
documents sort of usurping regulation. And I'm  
only going to cite one, specific example, but  
it's one that really kind of speaks to the core  
of the issue, and it relates to the Remediation  
Standard Regulations that -- that Graham talked  
about earlier.

I was just starting my career in '95 when the  
Remediation Standard Regulations were first  
adopted, and as you may know, there's a long  
list of -- of numeric compounds that this  
concentration in this kind of situation is or  
is not appropriate. Well, the fact of the  
matter is that those numeric standards have  
evolved significantly since that time in 2002,  
and again in 2003 the numeric standards were  
modified. In fact, if you went on the

131

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

ROGER REYNOLDS: I don't have a specific knowledge of that. I assume they weren't, but I -- I have nothing to base that on. So I -- I don't know is the short answer.

REP. HORNISH: Okay. Thank you.

REP. ROY: Any other questions or comments from members of the committee?

ROGER REYNOLDS: And we certainly do think this would be an appropriate issue for the Attorney General; we agree with that.

REP. ROY: Seeing none, Roger, thank you.

ROGER REYNOLDS: Thank you very much.

REP. ROY: Rich Wiehl, followed by Mike Fox.

RICHARD WIEHL: Good afternoon, Senator Meyer, Representative Roy.

My name is Richard Wiehl. I'm President of Consumers Petroleum, located in Trumbull, and we're here to object to House Bill 5119. We're local, family owned petroleum distributors, started by my grandfather, but we also operate the Secondi Truck Stop in Milford.

As the operator and supplier to several dozen gas stations in Connecticut, my company, my customers, themselves small businesses, and the people I employ rely on the tank program to satisfy the federal government's requirement to establish financial responsibility for any petroleum release that may occur. H.B. 5119 threatens to render the program inoperable and

132  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

would negatively affect a tank owner's ability to clean up unintentional releases.

My company, like most petroleum distributors, work hard to ensure that underground tank's storage leaks -- storage tank leaks do not occur. We go to great lengths and expense to make sure our tanks are in compliance with local, state, and federal regulations. The tank program exists in the event that things do not go as planned.

If we suspect a leak, we now contact DEP and take immediate action to remedy the cause of the suspected leak. As H.B. 5119 is written, if DEP responds to our call, my company or customer would be barred from accessing the tank program and reduce our ability to clean up the environment. This legislation would punish tank owners who are in -- who are in compliance with the law. It creates a lose/lose situation. If we report a leak and DEP shows up, we cannot access the program. If we do not report a leak, we can't access it either.

Connecticut businesses need a tank program that serves the best interests of the environment and complies with federal law. The current -- the current program fulfills that need and H.B. 5119 would make the program noncompliant and impact or ability to keep the environment healthy. I ask the -- the committee to please oppose it.

Thank you.

REP. ROY: Thank you, Rich.

Any questions or comments from members of the

133

February 22, 2010

mhr/gbr

ENVIRONMENT COMMITTEE

10:30 A.M.

committee?

Senator Meyer.

SENATOR MEYER: I'm just trying to come to grips with the situation as it is now under the law and -- and what the bill proposes. Let's assume that there's a store -- a petroleum storage tank and -- and there's a leak in it. There is -- I gather there's this fund that could pay for the remediation of the leak; is that right?

RICHARD WIEHL: Correct. It's -- it's --

SENATOR MEYER: And -- and that -- and that payment for the remediation, the remediation cost would be made regardless of whose fault that leak was. If the leak -- if a leak was the fault of -- of a gas station, that would not be relevant. The -- it'd -- you'd be able to get the -- the public funds or restoration costs; is that right?

RICHARD WIEHL: Correct.

SENATOR MEYER: Now, what this bill does in part, as I read it, it -- it says that it doesn't take away the -- the payment of money for the costs of a leak, except it now makes an exception by saying that we're not going to pay money to the party that caused the leak. And why if that -- if my reading is correct, why -- why isn't that a -- an appropriate disposition?

RICHARD WIEHL: Well, it makes a difference between cause and effect, if you will, sir. The party causing the release could -- it's not intentional, by and large. And this program

134

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

was established in lieu of insurance, back in the '80s, to comply with the federal require for financial responsibility. So the way the proposed regulation is or proposed legislation is worded -- and I understand from Mr. Stevens they -- they intend to change it, but the way it's written right now, it would eliminate your ability to collect on the fund if you call the DEP and they show up. If you call them and they don't show up, you can collect, the way it's written. Okay? Hopefully I've cleared up the question.

REP. ROY: Thank you.

Any other questions or comments?

Representative Hennessy.

REP. HENNESSY: Thank you, Mr. Chairman. Just to clarify, this fund is -- has money in it and you have been able to enjoy receiving funds for remuneration --

RICHARD WIEHL: Yes.

REP. HENNESSY: -- and -- and others?

RICHARD WIEHL: Yes. Many people have, over -- over the last 25 -- 22 years.

REP. HENNESSY: Okay. Thank you.

REP. ROY: Any other questions or comments?

Rich, your work on the restaurant and the -- on the truck stop looks great.

RICHARD WIEHL: Thank you.

135  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

REP. ROY: You expect to open a restaurant again or no?

RICHARD WIEHL: No. Sorry.

REP. ROY: It's okay.

RICHARD WIEHL: Sorry.

REP. ROY: No other questions?

Thanks for coming.

Mike Fox, followed by Chris Herb.

MICHAEL FOX: Good afternoon, Representative Meyer -  
- excuse me -- Senator Meyer, Representative Roy, members of the committee.

My name is Michael Fox and I'm the Executive Director of the Gasoline and Automotive Service Dealers of America. We represent the gasoline retailers here in the State of Connecticut. I'm also and have been for approximately four years a member of the Connecticut Underground Tank Review Board. I think I can clear up many of your questions, but we come before you this morning to strongly oppose H.B. 5119.

I won't be redundant. You've heard that it's not minor revisions, it's major. I am concerned because the industry was not consulted at all before this bill was brought to the committee's attention, and I talked to Chris Herb and other members of the jobber's association; they weren't either and neither was the Underground Tank Review Board. I think -- I'm not positive -- but this bill was trying

137  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

keep a competitive environment.

Without the Underground Tank Fund, these businesses would close and you would have a huge increase in Unemployment claims going to the State of Connecticut at a time when none of us can afford this.

The other issue is yes, the fund is here. It is funded through a mechanism called the "Gross Receipts Tax," and you've heard earlier that that tax alone generates over \$400 million in revenue. We only receive approximately \$12 million in past years to the Underground Tank Review Program of which \$2 million goes for staffing expenses at DEP.

I think you've all heard about the Yankee Institute releasing all the salaries of state employees. Well, we went back and added it up, and it doesn't come anywhere near \$2 million for the staff's salaries. So when we look at the cost necessity of this program, it just doesn't exist.

REP. ROY: Thank you, Mike.

Any questions?

Senator Meyer.

SENATOR MEYER: Let me just ask you the same question I asked the last witness. You know, why isn't this bill, with respect to the storage tank fund, why doesn't this bill make sense in that -- that no one who actually caused the -- the release or the leak of the tank could collect from the fund. Why wouldn't this bill give an incentive to users and

136

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

to be sold to you this morning on a cost savings, that when the DEP steps in and does a cleanup, there's a cost savings. Well, as a member of the Underground Tank Review Board, I'm intimately involved in all of the cost of the claims that come before the board, and in my humble opinion, every time DEP steps in and does a cleanup, it sometimes costs 2 and a half times as much as when the industry does the exact, same cleanup.

I did not hear any need or necessity from the DEP or a rational reason for this bill such as contamination to existing groundwater. This is nothing more than a power grab. This is nothing more than the DEP trying to use a sledge hammer for something that is very minor. And for that reason, this bill should not see the light of day out of this committee.

I can tell you that as an industry, we have recently in the last three to five years purchased over 200 pieces of property from major oil companies that have kept jobs and businesses alive here in Connecticut. In 2010, we're getting ready to purchase approximately 100 more locations. If the major oil companies had their way, those pieces of property would have been sold for highest and best use, taken out of service, and would have lessened competition in the retail gasoline market. And we all know what that would do to prices here in Connecticut.

Thankfully, through the wisdom of the Legislature, you passed a bill which we call "the right of first refusal." It has given us the ability to purchase these locations from the majors and continue to operate them and can

installers of this tank to be more careful about the tank, because they know that if they're -- if they -- if they've done something improper to cause the leak, they're going to have to pay for it themselves?

MICHAEL FOX: Senator, I think that's a -- that's a brilliant question. I can answer that for you. Number one, it falls within the definition of what is a responsible party and a nonresponsible party. And when we use the word "responsible" I think for most people of the General Assembly, that word responsible means we caused the leak. No -- in an -- if an installer did something wrong, we don't usually find out about that for a few years. A very common situation, you glued the fittings together, seven or eight years later, the glue wasn't done properly, that fitting starts to leak. The installer doesn't go back before the fund; the gas station owner does because we're the operator of that station.

We've even supported legislation through the DEP to broaden that label of responsible party, meaning that if I'm a franchisee of a major oil company, I don't own the property, I'm just the tenant. Because I operate that station, I can be held as a responsible party. And then we have these guidelines that we have to do these daily and monthly meter-versus-stick reconciliations to determine if there is a leak. Once there is determined that there is a leak at the station, I think as an Environment Committee, we want to have incentives out there to immediately report that to the DEP, the proper authority so that the problem doesn't become groundwater contamination get into local drinking water. This bill will do nothing more

139

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

but make it a disincentive to do that, so I think we get caught up in what a responsible person is.

If you go out and you do something that causes negligence -- that's a different word than responsibility -- when you come before the Tank Review Board, believe me, we are not going to reimburse you for the cleanup of that facility. In fact, I think the average number that we use today is if the cleanup costs are about \$100,000, there already is a 10 percent deductible -- that's -- that's minimum -- but on average the reimbursement is about 60 percent. So when you take that 10 percent deductible and then 60 percent reimbursement, on a hundred thousand dollar cleanup, the person performing the cleanup -- who's determined that because of the regulation, as a responsible party, not the person who caused the leak -- gets about 50 to 60,000 dollars reimbursed from the fund.

And more importantly, it's a tax on our business that we self-imposed upon ourselves. So I think there's this feeling, at least I get the feeling when I talk -- talk to members of DEP that it's not our money, it's the state's money. Well, whenever you tax my business, you're taking away my ability to generate a profit, and that's how I would pay for things that need to be done in my business. So, again, we provide 400 million to the state. I think the Governor's budget is cutting us back to about \$5 million. We're not -- we're not fighting to go back to the 12 million, we'd just like the amount of money that's necessary to help the fund do the excellent job that it's done for the last 15 years. So I think it's in

140  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

the definition of responsible party where we get caught up.

REP. ROY: Thank you.

Representative Miller.

REP. MILLER: Thank you, Mr. Chairman.

Just referring back to what Mr. Wiehl said, that once DEP goes to the site, they take over. And if they get a quotation to clean up that site, that may be exorbitant. If you're the property owner or the potential property owner, and if you'd come up with a -- a price that's much lower, would that be a way to reduce costs? 'Cause that's what we're trying to do on this. Will you think that would be some kind of a amendment or change in the bill that would allow you to do that, if the price is out of sight? Because we all know that government jobs are called "government job" because the price goes out of the -- out of sight someplace or you know.

MICHAEL FOX: Representative Miller, this bill -- trust me sir -- does absolutely nothing to cut cost. If the DEP were to step in, in what we would term "an emergency clean-up situation," that means that they've demonstrated and proved that there's a leak and that the owner of the property refuses to clean it up, they step in on an emergency basis. I think we all expect the cost to be double 'cause it's classified an emergency basis, but then the Attorney General can go after the property owner. And believe me when I tell you, I can think clearly off the top of my head of ten examples where they do go after the property owner. Not only do they get

141  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

double the cost reimbursed, but they get all of the legal fees and costs associative of collecting. So we've used that information to our membership to say if DEP comes and asks you to clean it up, clean it up. It's going to be cheaper, cost effective, and you have the fund to go to.

This just seems to be a mechanism that the DEP can step in without really determining that the station owner was responsible for causing the leak, and then we're barred from going to the fund. That's the problem. This bill is not a cost saver.

REP. MILLER: Well, if there's an emergency, the state just can't let the -- its oil, be leaking all over the place and cause substantial damage to --

MICHAEL FOX: No, sir, that's --

REP. MILLER: -- (inaudible) --

MICHAEL FOX: -- what I'm telling you. There already is a mechanism -- mechanism in the regulations, and they have done this.

Again, I listened very attentively when DEP was testifying. The only way they sold this bill to you, in my humble opinion, was that it's a cost saver. There is no cost savings because the DEP jobs, as you correctly stated -- and I'm here to tell you, we see these claims -- cost 2 and a half times as much as when the industry does it.

Now, it then goes further to bar the property owner from going to the fund which, to me, is

142  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

totally counterproductive of what we're trying to do, which is clean it up as cost effective as possible.

For over five years, the distributor association and the gas retailers have made offers to the DEP on how to save money. And for 5 and a half years, all we've been told is, yeah, but that's going to eliminate our job. If we put up a website that will make it easier for the industry to know what they're going to get paid, if we post the documents to a website rather than having to call and have staff fax them to us, if -- and -- and we actually had a company that was going to donate the website to the State of Connecticut, and DEP told us, no, we can't do that, that's a gift to the state. That -- that just doesn't make any sense to me.

We're -- we're in a budget crisis. We should be looking at every avenue we possibly can to drive the cost down. And, in fact, if we looked over the last six years, we've gone from an average cleanup cost of over \$225,000 to an average cleanup cost of 145,000, and we're saying that's not good enough. We need to get it under a hundred thousand dollars, and we can, based upon what other states and programs that have been done in other states.

REP. MILLER: Well, maybe you should talk to DEP and start working them somehow to see --

MICHAEL FOX: I think that's the thing that's frustrated us most here today, the -- the secrecy or lack of transparency on this bill, because we have had a pretty good, open-dialogue conversation with them going along, and this bill just came out of nowhere.

143  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

REP. MILLER: Okay. Thank you.

MICHAEL FOX: Thank you, sir.

REP. ROY: Thank you.

Any other questions or comments?

See -- Representative Mushinsky.

REP. MUSHINSKY: Thank you.

I just wanted to ask you about -- to respond to what the commissioner said, if it's true or not if you have an opinion on this. But the commissioner said the state incurs costs, the taxpayers, in situations when a responsible party fails to act promptly to respond to a release of petroleum. The state has to perform the cleanup and then seek cost recovery from the responsible party. Now, is that -- is that accurate? Is it -- is this -- are we, the taxpayers, now picking up the freight because the responsible party didn't act quickly enough?

MICHAEL FOX: Let -- let me give you an example, and I think you'll -- you'll have to answer your own question. If you have a service station that's located down gradient from an existing service station up here, and this station has reported a leak and has a leak, and that leak we can tell just from common sense ran down the hill and has now contaminated this station. The DEP is coming to this station owner and saying, you're the responsible party; you caused this leak, when in fact they know that this -- the reason they know about it is this

144

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

station down gradient from the leak is probably in litigation against this station and trying to work out legally which one of us is going to go to the fund and clean up not only the site uphill but the site downhill.

Why does that become important? Because I don't want to get tabbed with my million-dollar maximum when I'm not responsible. I want to make sure that the million dollars goes over to the person that caused the leak, and that is the only examples that we now of in the industry, citing here.

Again, if they can give you other examples, I'll -- I'll gladly look through them for you in my capacity on the Underground Tank Review Board. But we haven't seen the example that the commissioner is giving, saying that the responsible person refused to clean it up. I guess it's just an interpretation of who is responsible.

Now, I will agree with the commissioner that under the current regulation, since we operate the station down gradient, that I technically am a responsible party. But I didn't cause the leak, and the fuel didn't come from my station, it came from this station. I'm just fighting to make sure that my location doesn't get tabbed as being the responsible party and my million-dollar maximum gets capped, because I didn't cause this leak and my station didn't cause the leak. And that, I think, is the area that we're debating.

REP. MUSHINSKY: Okay. But while you're suing the uphill vendor -- merchant, who's cleaning up the pollution?

145  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

MICHAEL FOX: The uphill person usually is involved with cleaning up what we call the "immediate area," the area where the leak was first caused, and then you have to, whether DEP does the cleanup or not, we have to get what we call "site access." And you've heard a lot about that over the years when, you know, the person uphill wants site access to my property, and I just want to make sure that there site access is not -- is going to do the right job, so we have to work that out. No matter who does that, DEP or the private industry, that has to be done.

So I guess I would defer to your expert opinion who's going to do that in a quicker, more cost-effective manner, me whose property was contaminated by someone else -- and I certainly don't want it on my property, I want it off there as fast as possible -- or the DEP. And if you -- if you ask me my opinion, I can only give you the historical numbers. The individual property owners do it cheaper, faster, and quicker. I don't know of an incidence where a real responsible person has refused to do the cleanup on a site. That's my problem. If that's the pretext of this bill, I've yet to see that exist.

REP. ROY: Thank you.

Representative Lambert.

REP. LAMBERT: Just as a clarification, while you're cleaning up, you are using the fund's money?

MICHAEL FOX: We have embarked with the DEP a few years ago, because what was happening is you

146  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

had people who would start to do a cleanup and then take five, six, seven years to get bills in, so we had no way of knowing what the amounts were. We supported the DEP legislation that now we have milestones that once you report a spill, you're on a timetable and you have to start hitting these milestones before you can get reimbursed. That has created a tremendous amount of cost efficiencies, but more importantly, you've got about a five-year window, and if you don't get it done in five years, then you can't come back at all. So (a) you -- you're forced because of these milestones, which we supported as the retailer's association. ICPA supported it; DEP put the regs in. But that is something that has really created the efficiencies.

The only way to squeeze more out of it, cost savings now, is to get what we call "fixed cost" for the work that's being done over and over on -- you know, consistently. Taking away 50 tons of dirt is taking away 50 tons of dirt, it's just the distance. So that's the next step that we have to get to, and we want to do that but, unfortunately, because of budget constraints, we've been put on hold by the DEP. So you're -- you have to get your things in based upon the state statute, and then there's a time limit of how fast you have to get it in, and we support that.

REP. ROY: Representative Davis.

REP. DAVIS: I apologize if this was mentioned before but I was not in the room for the entire discussion. I'm getting the impression from the testimony of the DEP that the goal here is to have the tank owners maintain the tanks in

147

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

better condition and that there is no incentive for them to do that as long as they know that if they have a tank in the ground and there's a problem, they're going to be reimbursed for the required cleanup because of the -- from the -- from the program. And they're saying, the commissioner mentioned that the program doesn't have the funding to do that, to may it be maintained at the same level, so they're looking for a way to encourage the tank owners to maintain the tanks so that there won't be the leaks that have to be cleaned up.

MICHAEL FOX: I'll be brief because I did address this earlier, but --

REP. DAVIS: Sorry.

MICHAEL FOX: -- I think what you just said to me was that the DEP doesn't have the time or the staff to enforce their own regulations that they put on the books, because when we talk about maintaining our tanks, there isn't -- once the tanks are installed in the ground, there is nothing that you do other than follow the DEP and federal regulations for testing. But on a daily basis, every single day, every single service station owner in the State of Connecticut is required to go out there, physically stick the product that's in the tank and then match that against the meters, the electronic meters. I'll make it simple. When you stick the tank in the morning, it says there are 2000 gallons of regular in the tank. We stick the tanks at the end of the day, it says there's a thousand, so there is a thousand gallons of regular gas missing. But the electronic meters say 1500 is gone. That's a problem. And we are within one half one

148

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

percent; that's how critical it is a drop. And -- and then when you're doing 50, 60, a hundred, 200,000 gallons of gasoline, you're talking about no more than one or two gallons being missing, and that's normal evaporation, summer and winter. So that's something that if they are worried about that, they're already fining our industry at record rates.

To give you an example, I asked for this information the other day, not even knowing about this bill but just to do a news letter for our members. I think it was in 2008, the amount of fines that were sent out to the industry was approximately \$2000; 2009, it was 90. But when you looked at what the fines were for, they were a tank test was done a day late.

And we ran into this situation the other day where we had a member whose tank needed to be tested. The contractor was on another job and when he tested the tank, there was a leak. He contacted the state and said I'm supposed to go here next, can I go there a week later so we could fix this leak? And DEP said yes, that's no problem. They did the test, went to the next station a week later, did the test, nothing was wrong, sent the paperwork into DEP, and that owner was fined \$4500 for doing the tank a week later than the deadline when he had DEP's permission.

There's only one problem. We didn't know at the time there's two agency. We got permission from the person who does the tank testing or just does the scheduling, not from compliance. So we went back to compliance, explained the whole thing to them; they were gracious, they reduced the fine in half. But there was

149

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

nothing there that was going to create or cause a groundwater or contamination problem. It was simply that the test was done seven days after the due date. So I think it's relative here to look at not dollar amounts of fines in saying, oh, these guys are bad and they're contaminating the ground; in fact, we're the mom and pops now that are owning the stations, not the majors. We can't afford to fight you. We can't afford to fight city hall like the majors could; so we -- we tend to cooperate.

REP. DAVIS: Thank you.

Thank you, Mr. Chairman.

REP. ROY: Thank you.

Any other questions or comments from members of the committee?

Seeing none, Mike, thank you very much.

MICHAEL FOX: Thank you, Mr. Chairman.

REP. ROY: Chris Herb, followed by Chris Phelps.

CHRIS HERB: Good afternoon.

My name is Chris Herb. I'm the Vice President of the Independent Connecticut Petroleum Association. We're here to oppose House Bill 5119, that you've heard a lot of testimony from the previous speaker on.

There's some questions -- I'm going to depart from my testimony -- there's some questions that were asked about what is the incentive to not spill or not leak. Well, when I started

150

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

this job ten years ago, DEP publicly said that commercial tank fund was an incentive for sloppiness. And I can -- and I'm here to tell you that -- that it seems like the new generation of DEP leadership is coming back with sort of the same view of the way that operators maintain their tanks.

The vast majority of the underground storage tanks and gasoline stations in Connecticut are owned by family businesses, that you've heard from several of them today. The whole net worth of their companies are in having clean properties that have functioning tanks that serve the public with competitive gasoline prices.

Well, several questions have been emanated from the members of the committee saying what incentive do you have? Well, if my product is leaking in the environment, my property has a diminished value, if it's not worthless at all. If this bill is applied, then I would predict that these family owned businesses, that aren't refiners -- the last refiners who owned tanks in Connecticut, Mobil, will be leaving Connecticut. The people who will purchase that are local, family owned companies. There is no reason in the world that we would neglect or be negligent in any way of maintaining things properly, because we have every incentive because our family names for generations have been on these tanks and these properties, to let them leak and to be negligent in any way.

Now, we have been in discussions with DEP since the bill came out, and I will echo Mike's comments that the regulated industry wasn't consulted on this legislation prior to its

151

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

introduction. If it was, we may not have had to have this conversation. And they have said that there's a willingness to take a look at it. I give DEP credit for -- for doing that, but I would say that we have examined it, and sort of splitting the baby on this particular issue would still kill the baby.

We need this fund to function. Without it functioning, denying access to tank owners puts us in violation of federal law. Violation of federal law results in the closure of the station, abandoning them. These are the stations that produce petroleum gross earnings tax to the tune of \$400 million, sales tax for in-store -- in-store sales, income taxes of our employees, corporation taxes of the -- of the companies that own them. These -- this is the last industry that isn't owned by a major oil; this is the last family owned industry that generates the kind of revenue this state needs to support its budget. We should not be examining pieces of legislation that -- that would compromise that ability.

Obviously, we are against House Bill 5119. I'd be glad to answer any questions. We're going to continue to talk to DEP about this.

Do you have anything you'd like to ask? Be willing to answer.

REP. ROY: Nice timing, Chris.

Any questions?

Representative Hennessy.

REP. HENNESSY: Well, thank you, Mr. Chairman.

152  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

You might have -- somebody might have mentioned this, but why have the refinery companies left the state?

CHRIS HERB: They -- we have seen a national trend where refiners are selling properties. The, sort of our view on it is that the bigger profit margins are in the refining of a product, not in the stores. But, you know, literally, if you own the tank and all the property, you have a much -- part-time employees, there's insurance issues, Unemployment Compensation issues, I mean, there's been -- there's a -- a much bigger human resource needed to run a gas station than to have -- build a refinery in the middle of the Gulf of Mexico. That's my opinion.

REP. HENNESSY: And -- and the chains, retail gas chains? They're -- they're kind of moved into take up this space that's -- that's opened up?

CHRIS HERB: Oh, you're -- the way that the gasoline industry in Connecticut is basically divided is it's amongst -- right now, a few hundred stations are owned by refiners, but they're selling the stations.

Then the next largest group are the distributors, who we represent, who are family owned businesses that do not have any refining interest. We don't own refineries in Abu Dhabi. We're -- we're based in Bridgeport and Waterbury and Hartford.

And then the final one is independent station owners and lessees, where it's sort of one man, one station situation. And what we are seeing

153  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

is that when -- as recently as a couple of years ago when Shell sold all of their stations in Connecticut, they were bought by individuals. Exxon is selling; I don't know how that will go. Will they be purchased by a major chain that's a more recognizable name, like a Cumberland Farms or an Xtra Mart or something like that? Possibly. Will they sell them to individuals? I -- I'm not aware of -- of how that will actually shake out between now and the final sale.

REP. HENNESSY: Thank you.

Thank you, Mr. Chairman.

REP. ROY: Thank you.

Any other questions or comments from members of the committee?

Seeing none, thanks, sir.

Chris Phelps, followed by Roger Smith.

A VOICE: (Inaudible.)

REP. ROY: Roger Smith, followed by Seth Molofsky.

ROGER SMITH: Good afternoon, Senator Meyer, Representative Roy, and members of the committee.

My name is Roger Smith and I'm the Energy and Climate Campaign Director for Clean Water Action. We're a grass roots nonprofit with 25,000 Connecticut members. And I want to testify on three bills, Senate Bill 120, House

HB 5125

HB 5127

189

February 22, 2010

mhr/gbr ENVIRONMENT COMMITTEE

10:30 A.M.

REP. MUSHINSKY: -- very public, but --

BILL ETHIER: -- I understand that, but the letter that came from DEP was not.

REP. MUSHINSKY: Okay. I -- I would agree with that, that the letter wasn't.

REP. ROY: Okay. I'm going to interrupt. We're starting to go far afield here.

Any other questions for Bill?

Seeing none, Bill, thank you very much. I appreciate.

Grant Westerson? I don't see him.

Kachina Walsh-Weaver. I don't see her.

Patrick Bowe; I don't know what he looks like. Thank you.

PATRICK BOWE: Thank you, Mr. Chairman.

I'm Patrick Bowe and I'm the Director of the Remediation Division at Department of Environmental Protection. I just wanted to follow up the earlier testimony. It's become evident as we've sat through, well, what was going on today that the intent of the agency in making the proposition on Bill 5119 has been substantially misinterpreted.

First off, the agency strongly supports the existence of the UST Fund. We recognize that its use by Connecticut businesses is an absolute key component of them being able to

190

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

stay in business under federal law, as it -- currently structured. But I wanted to be clear that the proposal that we made applies only to sites where there are five conditions. Those conditions would be where there has been a release from an underground fuel tank, a gasoline fuel tank at a fueling station, that the DEP has been called to that site and has assessed responsibility for that release and ultimately the issue of whether DEP is called to the site or does not get called to the site, whether it's reported or not reported to DEP is a complete red herring in the -- in the process here. So it -- it can be followed through a flowchart either way. But the DEP once they come to the site has basically said to the responsible party we've determined that you're responsible, there is a condition here that in order to protect human health and the environment needs to be responded to immediately, please get your contractor and begin work.

In the instance where that responsible party chooses not to begin work on their own after being notified by DEP, that it is DEP's opinion that they are, in fact, the responsible party, DEP will move forward using the state funds and hire a -- an emergency response contractor to come in and respond to that situation.

Now, at the end of that cleanup, DEP is entitled by statute to seek reimbursement for the state for those instances where it has by default of the responsible party been forced to go in and use state money. They can go back and recoup from that responsible -- excuse me -- from that responsible party the amount of funding that the state has exercised on that --

191  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

on that site.

And under current law, if DEP is forced into a situation by a responsible party to follow that process that I described and expend state money, and they go back to that person and seek reimbursement through due process that is available, that individual has the opportunity to go back to a different state fund, the UST Fund and say I created a problem, I refused to respond to the problem, I put the state in a position where it had to respond to the problem I created, and now that they are suing me for the problem that I created, I want to be reimbursed by the fund.

So DEP's proposal is only intended to apply to those instances, to the description of numerous folks who have said, you know, my -- my station is here, someone else, the station is there. We fully support that the individual who owns the next station down can access that fund. In fact, not too long back the Legislature removed the bar to reimbursement for people who were, in fact, out of compliance or negligent on -- on the fund and basically replaced that with an admonition that regardless of how you came to create the problem, if you move forward on your own to remedy the problem, the fund will be responsible and the fund will -- will reimburse you. But before you can be reimbursed, all you have to do is say the station is now in compliance.

So, really, I think much of the response that we've seen today, very heartfelt by a number of folks who -- who are in the business and -- and run the businesses. We understand where

192

mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010

10:30 A.M.

they're coming from. We are only looking at the folks who have created a situation that I described, and we are only looking, really, to protect the, really the fund and the very people who also have come here to -- to testify today.

The fund has previously been up to 12 million with 2 million to the agency for administration. This year, 2010, starting last June, the agency is taking no administrative costs for staff or operations from the fund, and indeed the fund has -- has been whittled down due to finance circumstances that we're -- we're all aware of.

A VOICE: (Inaudible.)

PATRICK BOWE: I'm finished, sir.

SENATOR MEYER: Mr. Bowe, I -- with respect to raised Bill 5119, I -- I don't know if you were in the room. I asked the petroleum dealers why it wasn't a good policy to make responsible people -- people responsible for releases or leaks pay their -- pay the costs. And the answer, in part, was that the fixing the responsibility can be murky, can be hard to do. And the fixing responsibility could take precious time in which further contamination occurs. And -- and I came away, sort of with a feeling of, as a lawyer like of the strict -- a strict liability that if -- if there's a -- if there's a leak, we're not going to so much look at the who's responsible as -- as we are going to fix it. No fault, to use a better example, no fault rather than a strict liability. How do you feel about that?

193

February 22, 2010

mhr/gbr ENVIRONMENT COMMITTEE

10:30 A.M.

PATRICK BOWE: Well, the -- the situation we have right now is very similar to a no-fault situation. And the -- the fund responds very well, I think, to -- to people who have releases. The difference between the industry and DEP use of responsible party and the maybe sort of outside the business understanding of responsible party are slightly different. You can be responsible for creating a release from your underground tanks and be fully reimbursable by the -- by the fund. And the agency supports that in its entirety. That is the purpose of the fund having been set up in -- in the beginning.

Without the fund, each individual underground tank operator in Connecticut would be required to get insurance, and they will not get that insurance going forward. It's one thing but for things that have happened in the past, only the fund will -- will stand to -- to reimburse the -- the people. And then they need that fund in order to be able to move forward. So really we're talking here in our change only about those people who have created the -- the release but have in a sense refused to avail themselves of the opportunities the fund presents.

REP. ROY: Thank you.

Representative Miller.

REP. MILLER: Thank you, Mr. Chairman.

Good afternoon; you're in a hot seat.

The oil industry or gasoline industry said they were blindsided on this. What participated the

194

February 22, 2010

mhr/gbr ENVIRONMENT COMMITTEE

10:30 A.M.

-- precipitated this change and how often -- do you have a frequent, you know, do you have a frequent problem? Is it something that's very problemsome?

PATRICK BOWE: I -- I don't have a specific list of -- of instances where -- where that has happened or -- or people have attempted to come back, although I -- I do know that it has happened. And -- and over the years, that's not something that -- that the agency really has -- has tracked or that the board has tracked. But certainly in -- in this time of really true financial crisis with the state, that was one of the components that the agency looked at. And we basically felt that it was an appropriate course of action, that if you were both responsible for the spill and you refuse to avail yourself of the opportunity that the fund presents for you to be reimbursed and you basically held off until the DEP moved forward on its own, a worst-case scenario taken to extreme could be that everyone who had a release could sit back and wait until the DEP spent state money up front to be responsive to a spill and then at a later date the state would have to, in a sense, sue everyone to get their money back. And even if they did that, the back -- back door there would be that they could go to the fund and get reimbursed, even if the state sued them for reimbursement.

REP. MILLER: But is it a problem today?

PATRICK BOWE: I -- I don't have an assessment of how many of the -- of the applicants would fall into that category, but yes, it has happened.

REP. MILLER: Thank you.

195  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

Thank you, Mr. Chairman.

REP. ROY: Thank you.

Representative Lambert.

REP. LAMBERT: Thank you, Mr. Chairman.

Listening to the petroleum industry's testimony, there seems to be a disconnect. They had testified that it wouldn't be to their benefit not to clean it up, and if there was somebody uphill and it went down, they would have this correlation, I guess, of sharing. But they're taking the money out of the fund. How would it benefit someone to refuse and have the DEP do it?

And they -- they also made reference to the fact that the DEP would be so much more expensive. And when the DEP has to do that, I am -- I'm sure they have to do an immediate situation, and the cost, I'm sure, it has to be because it's -- it's not done on a regulatory basis. If you're doing under emergency always -- which always costs more if you have a -- PCBs or something from a regulator and you have to have somebody come immediately, there's always more cost -- costly when you do that.

But I can't -- that disconnect, though -- and Representative Miller's alluding to it -- why somebody would refuse if, in fact, they are going to take the money out of the fund. And does the state take the money out of the fund also?

PATRICK BOWE: Up to -- up to this point -- let's

196  
mhr/gbr

ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

start at the back end of the question, if I may. Up to this point, the DEP generally has not gone back to the fund because the fund is state money and the emergency response operations at DEP are also run with state money. So it -- it makes very little advantage for us to take out of one side of the agency budget and then -- and then go back to the independent board and say reimburse the DEP for that money. We'd much rather be reimbursing the responsible parties, the businesses, small businesses out there who are taking responsive action immediately, who are moving forward to -- to resolve any releases that they have. Those are the folks who need to be reimbursed, and -- and then reimbursed as promptly as we can move forward on it. So we -- we really don't want to be in a sense running a -- a shell game of taking money from one state pot and -- and refilling to another state pot.

The commissioner identified the -- the efforts that the agency is going forward with on LEAN, they -- to lean the agency and -- and to limit the amount of duplicative work or unnecessary work that goes on. This is -- this is, in fact, one of those types of -- of things. This would be very wasteful of state resources for us to find that there is an emergency, go to that location, find that the responsible party will not respond, gear up state contractors to come out, deal with that emergency, go back to the process of seeking cost recovery, and then ultimately having those folks still come to the DEP and to the USD Board in application then to be reimbursed for the DEP actions that -- and -- and the cost recovery operation. In effect, it's -- it's just wasteful.

197  
mhr/gbr ENVIRONMENT COMMITTEE

February 22, 2010  
10:30 A.M.

REP. ROY: Thank you.

Representative Chapin.

REP. CHAPIN: Thank you, Mr. Chairman.

You had indicated earlier that, I think, for a person to find themselves in this category they had to pass five tests, I think you said.

PATRICK BOWE: Five conditions that I -- I said.

REP. CHAPIN: What -- how large of a universe is that?

PATRICK BOWE: It's a relatively small universe.

REP. CHAPIN: What --

PATRICK BOWE: (Inaudible) --

REP. CHAPIN: What percentage of those --

PATRICK BOWE: I wouldn't -- I wouldn't be able to put a percentage on it but I could tell you that for every one that we have, it will chew up an enormous amount of agency resource. And each time we send people out to a responsible party's location where there's an emergency, we typically send a single -- a single responder. That responder will make contact with the property owner, the responsible party for the leak. They will tell the person what needs to be done and suggest to that person that they need to hire a contractor to -- to respond to that -- that emergency.

If that person doesn't, then we have to engage a contracting process to get an emergency

contractor out to the site. We have to then get our cost recovery people and -- and auditing people involved. Ultimately, when the -- when that cost recovery process is finished and -- and an individual would come before the board, again, the DEP has staff who review each and every one of the applications that come before the board. I notice one of the earlier folks had testified that approximately 60 percent of the requested money is actually approved. And I don't really know what that percentage might be, but for some applicants who have a lot of stations, 60 percent is not unreasonable.

But the reason that it's not a hundred percent is that we get people billing us for lunches, for sandwiches. We get people who had a problem with their station that needed to be resolved and they decided that they also needed to knock down the big canopy that goes out over the -- the filling station. In some cases, that might actually be legitimate. In other cases, the individual might decide that they really would like a new canopy. So there's a -- there's a great deal of cost evaluation that goes on through that process and it is very time consuming. So that's really why, even if it's a small number, we felt that this change would make it very clear that someone who got into that situation and refused to take action can be eligible for reimbursement through the fund, could not take this alternate route by forcing the DEP to send an emergency response through and then after all that is said and done and we'd engaged in cost recovery operations, they could come back to the board and pay, in effect, something whether it be close to or -- or higher or lower than what

199

February 22, 2010

mhr/gbr ENVIRONMENT COMMITTEE

10:30 A.M.

they could have responded on their own for it is really immaterial.

What they've really done is probably cost the state seven or eight times ultimately what they -- the actual dollar figure is in the -- in contention. And -- and it's -- it is so wasteful that even for the rare instances where that occurs, we felt this was a -- a reasonable change. And, indeed, that's why we considered it a minor change, because it only applied, in effect, to the -- to those folks who were, in effect, scoff laws saying no, I will not avail myself of the opportunity to go to the UST Fund; you do it, DEP, I won't have anything to do with it.

REP. CHAPIN: Thank you.

Thank you, Mr. Chairman.

REP. ROY: Thank you.

Any other questions or comments from members of the committee?

Seeing none, thank you, Mr. Bowe.

PATRICK BOWE: Thank you.

REP. ROY: Mr. Bowe is the last person signed up to speak. Is there anyone here who would like to address the committee?

Carroll, come on forward. State your full name for the record, please.

CARROLL HUGHES: Carroll Hughes, representing the National Solid Waste Management Association.

SB127



## Department of Environmental Protection

### Index of Year 2010 Legislative Proposals

- AAC Long Island Sound and Coastal Programs (SB 124)**
  - Require OLISP permits be recorded on land records
  - Authorize higher fees for "after the fact" construction of coastal structures
  - Make LEAN changes to LIS programs
  - Allow for electronic distribution of coastal permit notices
  - Correct the definition of "sewage" to be consistent with federal law
  - Repeal OLISP Coastal Act reports and other obsolete statutes
  
- AAC Recycling and Solid Waste Management (SB 127)**
  - Expand mandated recyclables
  - Streamline municipal recycling reporting requirements
  - Expand recycling of organic material
  - Add the Department of Revenue Services to assist in enforcing the Bottle Bill
  
- AAC Remediation Programs of the DEP (SB 119)**
  - Reengineer the ELUR program (notice of activity and use restriction)
  - Authorize Alternative Institutional Controls (AIC)
  
- AAC Environmental Conservation Licensing (HB 5128)**
  - Update licensing statutes to reflect current practice
  - Authorize electronic transactions
  - Clarify authority for special use licenses on DEP-controlled property
  - Clarification of "assent" language
  
- AAC Minor Revisions to the Underground Storage Tank Petroleum Clean-Up Account and Groundwater Pollution Abatement Statutes (HB 5119)**
  - Restrict UST reimbursement when DEP seeks cost recover
  - Fix Potable Water Filtration system ownership problems
  
- AAC the Extension of General Permits Issued by the DEP (SB 121)**
  - Extend general permits like the federal EPA method



**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



Public Hearing -- February 22, 2010  
Environment Committee

Testimony Submitted by Commissioner Amey W. Marrella  
Department of Environmental Protection

**Raised House Bill No. 5119 - AN ACT CONCERNING MINOR REVISIONS TO THE  
UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND  
GROUNDWATER POLLUTION ABATEMENT STATUTES**

Thank you for the opportunity to present testimony regarding Raised House Bill No. 5119, AN ACT CONCERNING MINOR REVISIONS TO THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT AND GROUNDWATER POLLUTION ABATEMENT STATUTES.

We appreciate the Committee's willingness to raise this bill at the request of the Department of Environmental Protection (Department). This proposal, that we strongly support, would provide cost savings to the state in two ways. First, this bill would ensure that clean up funds (reimbursements for cleaning up primarily gasoline station sites) are not used by responsible parties just to reimburse the state when the responsible party fails to clean up the site and state had to incur costs performing the cleanup. Second, this bill clarifies the groundwater pollution abatement statute by allowing a homeowner to keep a water filtration unit that was installed by the Department where the unit is no longer needed for its original purpose and where the Department determines it is cost effective for the state to leave the system with the homeowner.

Section 1 of the bill amends the underground storage tank reimbursement program. This program was established in 1989 to satisfy federal financial assurance requirements for underground tank owners and operators. Since its inception, the program has awarded over \$190 million to reimburse owners and operators for costs associated with the cleanup of contamination from leaking underground storage tanks. However, the program was never intended to be used by applicants to circumvent the state's cost recovery provisions and avoid their cleanup obligations.

The state incurs costs in such situations when the responsible party fails to act promptly to respond to a release of petroleum. The state has to perform the clean up and then seek cost recovery from the responsible party. Sometimes this requires that the Department to file a lien on the property, a time consuming and expensive undertaking. Thus, the ability to bar recovery of such costs when a responsible party does respond in a timely and appropriate manner to a release would provide applicants seeking reimbursement from the program with greater incentives to properly maintain their underground storage tank (UST) compliance and to promptly address any releases. With the recent reduction of funding for the program, barring such recovery would also preserve funds for applicants that are complying with their obligations to promptly investigate and remediate their release(s).

In addition, this bill minimizes the chance that Department staff will have to spend substantial time and general fund monies to remediate a pollution release, and then spend substantial time to seek recovery of the funds, only to face a claim by a recalcitrant responsible party that general funds in the UST account should be used to pay the state's response costs.

This bill before you today ensures that applicants have an incentive both to maintain UST compliance for preventing releases, and to promptly remediate their UST releases, while preserving funding for applicants that are complying with their obligations. A few, but important, drafting amendments are needed to the bill to clarify that the program will continue to cover cleanup costs at all sites voluntarily reported to the Department. With these amendments, the Department strongly supports this section of the bill.

Section 2 is an amendment to the groundwater pollution abatement statute, and provides an efficient mechanism for the Department to allow a homeowner to keep a filtration system that the Department installed on their drinking water well to filter contaminated drinking water. After the Department determines the filter is no longer needed or no longer subject to state monitoring and maintenance, some homeowners wish to keep the filter. Removal by the Department would incur additional costs to the state with no benefit since the filter units usually cannot be cost-effectively reused at other properties. In such situations, it is more cost-effective for the state to dispose of the filter by allowing the owner to keep it. This bill would allow that.

In summary, the Department strongly supports the bill, with the clarifications referenced in Section 1.

Thank you for the opportunity to present the Department's views on this proposal. If you should require any additional information, please contact the Department's legislative liaison, Robert LaFrance, at (860) 424-3401 or [Robert.LaFrance@ct.gov](mailto:Robert.LaFrance@ct.gov).

**TESTIMONY PRESENTED BEFORE THE Environment Committee  
February 22, 2010**

*Ellen Blaschinski, Regulatory Services Branch 509-8171*

**House Bill 5119 - An Act Concerning Minor Revisions to the Underground  
Storage Tank Petroleum Clean-up Account and Groundwater Pollution Abatement  
Statutes.**

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**The Department of Public Health provides the following information with regard to  
House Bill 5119.**

The Department of Public Health is supportive of the provisions outlined in SB 5119 and understands the purpose and need for the amendments. Connecticut General Statutes Section 25-32(a) gives DPH jurisdiction over the purity and adequacy of public drinking water sources and the adequacy of methods used to assure water purity. The Department is recommending amending the bill to include notification to us when any contamination occurs within a public water supply watershed, an aquifer protection area, or in close proximity to public water supply wells; filtration or treatment is added to a public water system; and when a proposal to remove the filtration or treatment system is received.

**Thank you for your consideration of the Department's views on this bill.**