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ENVIRONMENTAL COMPLIANCE SERVICES, INC.

588 Silver Street, Agawam, MA 01001 tel 413.789.3530 fax 413.789.2776 www.ecsconsult.com

Senator Don Humason
64 Noble Street
Westfield, MA 01085

June 27, 2014

RE: Mr. Robert Brown
Bolton Street Service Center
Marlborough, Massachusetts

Dear Senator Humason:

There is an important piece of legislation being presented to the Massachusetts Senate in the coming days. On behalf of Environmental Compliance Services, Inc., an Agawam based company; I would respectfully request your assistance with Senator Eldridge's efforts towards its passage.

New England Service Station and Automotive Repair Association (NESSARA) on behalf of our client, Mr. Robert Brown (Bob), owner of Bolton Street Service Center in Marlborough MA. Bob is a member of this organization, and I currently sit on the NESSARA board of directors. NESSARA is the largest trade organization in New England representing small independent service station owners. They have a few other members that currently face or will soon face a similar situation to Bob regarding the 21J reimbursement cap.

Background:

Bolton Street Service Center (Marlborough, MA) background:

Upon his next claim submission, the owner of Bolton Street Service Center, Robert Brown, will reach the reimbursement limit of \$1.5 million dollars spelled out in MGL Chapter 21J Section 5. He is a single site owner who still has at least a couple of hundred thousand dollars of clean-up work to perform on his site before it is deemed clean. He does not have the financial ability to fund any additional cleanup efforts once the cap is reached, and has a high probability of filing for bankruptcy. If this happens, MassDEP would be forced to take over the remediation further draining their resources.

Additionally, the contamination on his site has spread to and is affecting abutting property owners, and at least two of those owners have filed civil lawsuits.

Bob is just the first in what NESSARA is saying will be a number of other small business owners that will be facing a similar situation. NESSARA is looking to make the following statutory changes to alleviate this problem for its members.

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NATIONWIDE COVERAGE

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Here is the current 21J statutory language.

MGL Chapter 21J Section 5

Section 5. Reimbursements described in subsection (a) of section four shall be subject to the cap specified in subsection (a) of this section and the deductibles specified in subsection (b) of this section:

- a) For each tank eligible for reimbursement pursuant to this chapter, reimbursement for all costs, expenses, claims, and other obligations eligible for reimbursement pursuant to this chapter shall not exceed, in the aggregate, \$1,500,000 for reimbursement under section (4)(a)(1) and \$1,500,000 for expenses under Section 4(a)(2) less the applicable deductible specified in subsection (b) of this section.

The language may state "For each tank...", but in practice the 21J board that approves the reimbursement of claims interprets this language to mean "for each site.... So in practice, a site eligible for reimbursement has a \$1.5 million dollar reimbursement cap regardless of the number of underground storage tanks it has on site.

Language being presented to MA Senate for consideration:

The language below has been presented to Sen. Eldridge's office. As the Senator representing this district, he is supportive of NESSARA's efforts to try to get the following statutory changes made before the end of this session. The goal is to try to get this change made as rider to legislation currently moving through the legislature, or as an outside section of any pending supplemental budgets.

SECTION. Section 5 of Chapter 21J of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by adding at the end of subsection (a) the following;

Provided, however that, for those who own or formerly owned not more than four dispensing facilities, for each tank eligible for reimbursement pursuant to this chapter, reimbursement for all costs, expenses, claims, and other obligations eligible for reimbursement pursuant to this chapter shall not exceed, in the aggregate, \$2,000,000 for reimbursement under section (4)(a)(1) and \$2,000,000 for expenses under Section 4(a)(2) less the applicable deductible specified in subsection (b) of this section.

Additional information:

New Hampshire just signed HB1229 into law increasing the funds available for reimbursement.

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6 Change in Fund Compensation Limit. Amend RSA 146-D:6, III to read as follows:

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

METHODOLOGY:

The Department of Environmental Services states this bill would extend the repeal dates of the oil discharge and gasoline ether cleanup funds from July 1, 2015 to July 1, 2025 and allows eligible owners to apply for an additional \$500,000 for onsite and offsite cleanups. The collection of import fees on gasoline and diesel fuel will continue through July 1, 2025. The Department states for the period FY 2009 through FY 2013 the average annual revenue collected from these import fees was \$13,125,151 and the average annual expenditure for cleanup projects for the same period was \$12,898,493. The Department assumes average revenue and expenditures will remain constant through July 1, 2025, however there may be individual years where revenue or expenditures are higher or lower than the average. The Department states the additional \$500,000 made available would be limited to eight or fewer locations and that the total amount would not be spent in a single year, thus will not impact overall expenditures. The Department states the program will only approve cleanup projects when new annual revenues and any available balances are sufficient to cover the cost.

Please let me know if you need any further information, or if you would like me to speak with anyone on this subject. Thank you in advance for your assistance.

Sincerely;
ENVIRONMENTAL COMPLIANCE SERVICES, INC.



Matt LeLacheur
Director of Business Development

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cc: Representatives Boldyga and Velis, Governor's Chief of Staff Richard Sullivan