

## OIL TANK REMOVAL PROGRAM

I would like to participate in Northampton's program to remove oil tanks over the city's drinking water aquifer. In consideration of being able to participate in this program:

I grant permission for contractors and city personnel to enter my property for the purpose of inspecting my fuel tank and access to the tank between the hours of 8:00 A.M. and 5:00 P.M., Monday through Friday, June 19 to July 14th, 1989.

I also grant permission for contractors and city personnel to enter my property for the purpose of removal my fuel tank and inspecting said work during the months of July, August, and September.

I understand that the contractor will pump out my fuel tank and fill it with sand to the extent practical, if he/she feels that removal of the fuel tank will undermine the foundation of any structure,

I realize that heavy equipment will be necessary for this work and hereby release the city and contractor of all liability and responsibility for incidental damages due to this work, including but not limited to damage to landscaping and lawn. I understand that soil used to backfill the tank hole may settle and that I will be responsible for additional backfill and all landscaping.

I understand that neither the city nor the contractor have any responsibility to clean up oil or other hazardous materials which spilled prior to the removal of the fuel tank. I further understand that if removal of my fuel tank reveals spilled oil or other hazardous materials then state regulations require me to clean up said spill. I further understand that if a spill is apparent upon the removal of the tank, the contractor and/or city personnel may contact the appropriate state and city agency.

I agree to hook up my heat to natural or bottled gas, an above ground fuel tank in the garage or basement, or install electric or wood heat, and I agree that I will not install another underground fuel tank on this property. I understand that the city will not assist me in connecting to an alternative fuel source or location.

I also understand that I may need to sign additional permissions before this work can proceed and that signing this does not bind the city to perform this work. I certify I/we own this property and grant this permission on behalf of all the owners.

CITY OF NORTHAMPTON  
MASSACHUSETTS

In City Council, ..... August 17, 1989 .....

Upon recommendation of His Honor, the Mayor, and the Finance Committee .....

Ordered, that the sum of Twelve Thousand, One Hundred Thirty and no/100 (\$12,130.00) Dollars be and hereby is transferred from DPW-Water Reserve (76-00765) and appropriated to Revenue Appropriation (96-09090), Conservation Commission, Other Than Ordinary Maintenance (Oil Tank Removal) 74-00741/36191 for removal of oil tanks over the City's aquifer off Ryan Road.

*all forms removed.  
all bills PD*

In City Council, AUG 17 1989

Rules suspended, passed two readings and enrolled.

Attest: **Adeline Murray**, City Clerk

Approved: **David B. Musante, Jr.**, Mayor

A true copy.

Attest: *Adeline Murray* City Clerk

5/30/89

OIL TANKS OVER THE AQUIFER

RESIDENTS	ADDRESS	TANK AGE	GALLONS
① John Kandrotas	72 Spring St.	35	500
② Grace Chardiet	100 Ryan Rd.	35	550
③ Deborah Adams (no gas available)	63 Golden Dr.	12	1000
* Ludwig Otto	354 Spring St.	10	500
⑤ Sandra & John Lind	433 Ryan Rd.	7	275
⑥ Alvin & Kristen Hall	206 Spring St.	36	550
⑦ Mr. & Mrs. Leo Goyette	30 Alamo Court	14	1000
⑧ John Schiefelin	123 Meadow St. 584-4210	43	1000
⑨ Alexander Gutowski	408 Florence Rd.	18	2000
⑩ Tom Ryan	282 Spring St.		1000
⑪ Cordis Bean	240 Spring St.	23	1000
⑫ Delia A. Shelkey	350 Florence Rd.		
⑬ ANN Shevach	272 Spring St.	35	550-1000
TOTAL 12 TANKS			
AVERAGE AGE OF TANKS		21	
AVERAGE SIZE OF TANKS			852

- \* Mail for Ryans goes to 340 N. Main St., Sunderland
- \* Mail for Sienkiewicz goes to 91 Prospect Ave.

BASEMENT TANKS

Nothing received (will not need to remove tank with B.O.H. RUBER)

\* Pauline Sienkiewicz 115 Ryan Rd. 25? 275  
only dirt under tank

GRACE CHARDIET TEL  
(407) 334-0954  
AS EARLY AS POSSIBLE  
E.H. AUGUST

\* ATTEMPT TO CONTACT OWNERS



STEPHEN W. KIDDER  
COMMISSIONER

EDWARD J. COLLINS, JR.  
DEPUTY COMMISSIONER

*The Commonwealth of Massachusetts*  
*Department of Revenue*  
*Division of Local Services*  
*200 Portland Street*  
*Boston 02114-1715*

March 9, 1989

Carla C. Cataldo  
Executive Assistant to the Mayor  
City of Northampton  
City Hall  
210 Main Street  
Northampton, MA 01060

Re: Removal of Oil Tanks  
Our File No. 89-14

Dear Ms. Cataldo:

You requested an opinion on whether the City of Northampton may appropriate and spend funds to remove certain underground oil tanks located on private property in order to protect the City's water supply.

As we understand the situation, a number of residential properties located above the City's aquifer have underground tanks in which heating oil is stored. Because of the age of these tanks, the City is concerned about possible leakage of this oil into its water supply. Rather than taking whatever action would be necessary under law to require the property owners to remove the tanks at their expense, the City proposes removing the tanks and spending municipal funds to do so. Your proposed course of action raises two issues.

The first issue is the power of the City to remove the tanks in question and the proper procedures for doing so. In general, municipalities, acting through their boards of health or health departments, have substantial authority under state law and regulations, as well as their own regulations, to control activities posing health and environmental hazards. G. L. 111, §31. In addition, they are empowered to examine the existence of nuisances and other dangers to public health and order them removed. G. L. Ch. 111, §122. However, at the present time, the underground storage of oil in this location is not illegal. This is because no statute or state or local regulation appears to prohibit or limit the use of these tanks,

Carla C. Cataldo

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nor is there any evidence of leakage or the imminent danger of such leakage to the degree probably required for the use of the tanks to be considered a nuisance. Therefore, it appears that the City could not proceed to remove the tanks immediately unless, of course, the property owners in question consent to the removal. We understand that you hope to meet with the homeowners in question and secure their consent. In the event you are unable to do so, you may wish to consider promulgating regulations under G. L. Ch. 111, §31 which could require that aging tanks be replaced and that any new tanks installed meet certain construction and installation standards, provide for a leak monitoring system and the removal of leaking tanks, or even prohibit the use of such tanks in certain locations. The City would then have the legal authority to remove the tanks if, after proper notice, a property owner continues to violate the regulations. Since the Department of Environmental Quality Engineering (DEQE) is the agency with jurisdiction and expertise in this area, we would recommend that you contact them if you decide to issue such regulations.

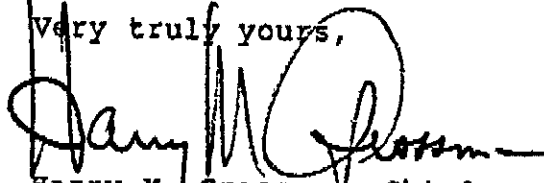
Assuming you have the property owners' consent, or the legal authority, to remove the tanks, the second issue is whether the City may pay for the removal, rather than the property owners. Specifically, you are concerned that if the City pays for the cost of removing the tanks, the expenditure may be considered to be for the benefit of the private individuals on whose land the tanks are located, rather than for a public purpose.

We believe the proposed expenditure is for a public purpose. As you know, providing for an adequate and pure water supply has long been recognized as a traditional municipal function and a municipality may appropriate money for that purpose. G. L. Ch. 40, §5, Cl. 5a. The fact that these homeowners may derive some financial benefit, in that they will not bear the cost of removing the tanks, does not make the expenditure one for private purposes where, as here, spending funds to remove a potential contaminant to the municipal water supply is clearly in the interests of the health and welfare of the general public. Quinlan v. Cambridge, 320 Mass. 124 (1946). Moreover, we do not believe that the Legislature intended to preclude or otherwise limit the expenditure of public funds for the protection of water supplies by authorizing the recovery of certain nuisance and pollution abatement costs from those persons whose actions endanger the purity of a water supply. See, for example, G. L. Ch. 111, §125.

Carla C. Cataldo  
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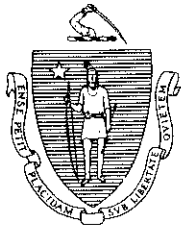
If I can be of further assistance on this matter, please do not hesitate to contact me again.

Very truly yours,



Harry M. Grossman, Chief  
Property Tax Bureau

HMG/kc



DANIEL S. GREENBAUM  
Commissioner

WILLARD R. POPE  
General Counsel

# *The Commonwealth of Massachusetts*

*Executive Office of Environmental Affairs*

*Department of Environmental Quality Engineering*

*One Winter Street, Boston 02108*

*Office of General Counsel, Tel. 292-5568*

May 15, 1989

Wayne M. Feiden, Planner  
City of Northampton, Ma.  
Office of Planning & Development  
City Hall  
210 Main Street  
Northampton, Ma. 01060

Re: Potential for MGL, c. 21E, §5(a)(5) Liability

Dear Mr. Feiden:

I am writing in response to your letter of April 10, 1989, addressed to Peter Bronson, Senior Deputy General Counsel of the Department of Environmental Quality Engineering.

Restated, your inquiry to this office is, if the City of Northampton hires a contractor to remove a privately owned oil tank and removal of the tank reveals oil contamination in the soil, or if the tank leaks oil or oil sludge when it is removed, is the City of Northampton ("the City") liable under MGL, c. 21E, Section 5?

Before I can address the above question, certain facts which are crucial to such a determination must be assumed. First, are the privately owned tanks on property owned by the City or are the tanks operated by the City? If the answer to either of these is yes, then the City will be jointly and severally liable for the remediation of the site under MGL, Chapter 21E §5, along with the owner of the tanks and any other identified responsible parties. This is regardless of whether or not the tanks were leaking prior to the City's remediation, or if the tanks were caused to leak during a remediation.

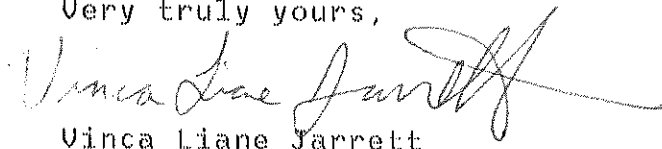
If, however, the tanks are on privately owned land and the City neither owns or operates the tanks, then the City might not be liable pursuant to MGL c. 21E if upon removal of the tanks, oil or hazardous material contamination is discovered. However, the City's liability is again dependent on several factors.

Under MGL, c. 21E, §5(a)(5), the City would be liable if it "cause[s] [or is] legally responsible for a release or threat of release of oil or hazardous material . . ." Thus, by way of example, if the City or its contractor negligently causes the tank to collapse, or makes a hole in the tank which worsens the contamination, the City will be liable pursuant to MGL, c. 21E, §5(a)(5). Further, if the City or its contractor, while performing the remediation, discovers either that the tanks have leaked or are leaking, the City might be required to notify the Department pursuant to the notification requirements of 310 CMR 40.376 and MGL, c. 21E, §7.

In addition, if a release of oil or hazardous material has occurred through no fault of the City, the City may seek its costs from the owner of the tanks and land where the tanks are located that the City voluntarily sought to clean up, because MGL, c. 21E, §4, Paragraph 3 provides that, "[a]ny person who undertakes assessment, containment or removal action regarding the release or threat of release of oil or hazardous material shall be entitled to reimbursement from any other person liable for such release or threat of release . . ."

I hope that the above explanation of the law has been helpful to you in determining whether or not to proceed with this project. If you have any more questions, please do not hesitate to call me at (617)-292-5568.

Very truly yours,



Vinca Liane Jarrett  
Assistant General Counsel

cc.: Kristin Palace  
Peter Bronson



BIF FORM

OIL TANK REMOVAL PROGRAM

	If all removals contacted together:	If contracted separately:
Mr. and Mrs. Leo Goyette	\$ <u>935 ✓ 915</u>	\$ <u>990</u>
Alexander Gutowski	\$ <u>975 ✓ 8/31/89</u>	\$ <u>1090</u>
Delia A. Shelkey	\$ <u>740 ✓ 8/31/89</u>	\$ <u>940</u>
Deborah Abrams	\$ <u>985 ✓ 915</u>	\$ <u>1070</u>
John Schiefelin (tank 1)	\$ <u>935 ✓ 917</u>	\$ <u>990</u>
John Schiefelin (tank 2)	\$ <u>935 ✓ 917</u>	\$ <u>990</u>
John Kandrotas	\$ <u>985 ✓ 917</u>	\$ <u>1090</u>
Alvin and Kristen Hall	\$ <u>935 ✓ 917</u>	\$ <u>990</u>
Cordis Bean	\$ <u>935</u>	\$ <u>990</u>
Ann Shevock	SLURRY \$ <u>790 ✓ 11/30 FOR REMOVAL</u>	SLURRY \$ <u>900 ✓ 1290 FOR REMOVAL</u>
Tom Ryan	\$ <u>1085 ✓ 917</u>	\$ <u>1190</u>
Grace Chardiet	\$ <u>1085 ✓ 8/31/80</u>	\$ <u>1190</u>
Sandra and John Lind	\$ <u>700 ✓ 915</u>	\$ <u>890</u>

Total bid for removals if contracted together \$ 12,130 12,470\*  
 Total bid for removals if contracted separately \$ 13,330 13,720

**CERNAK TANK COMPANY, INC.**

Name 100 Northampton Street  
Easthampton, MA 01027  
(413) 527-4810

Address

*Richard C. Cerna*, president 7/21/89  
 Authorized Signature date

\*Price if Shevock's tank is to be attempted to be removed

# CERNAK TANK CO., INC.

*Distributors of quality  
petroleum tanks since 1938*

100 Northampton Street  
Easthampton, MA 01027

(413) 527-4810

July 24, 1989

Mr. Wayne Feiden  
Office of Planning and Development  
210 Main Street  
Northampton, MA 01060

Re: Oil Tank Removal Program

Dear Mr. Feiden:

All contracts drafted for the Oil Tank Removal Program will include the following provisions for product and sludge handling:

- (1) Up to 275 gallons of oil in the underground tank will be transferred into the customer's new tank. The new tank must be installed prior to commencement of our work. Any remaining oil will be retained by Cernak Tank Co., Inc.
- (2) In turn, Cernak Tank Co., Inc. will remove and bear financial responsibility for proper disposal of up to 25 gallons of pumpable liquid sludge per tank.

Thank you for your inquiry concerning this matter.

Sincerely yours,



Richard S. Cernak  
President  
Cernak Tank Co., Inc.

RSC/mp