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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

December 1, 2010

BETH NAGUSKY

ACTING COMMISSIONER

Senator Seth A. Goodall, Senate Chair
Representative Robert S. Duchesne, House Chair
Joint Standing Committee on Natural Resources
Cross office Building Room 214
Augusta, Maine 04333-003

Re: Report of Stakeholder Fixes to the Waste Oil Site Remediation Program

Dear Senator Goodall, Representative Dushesne and Members of the Natural Resources Committee:

In 2010 the 124th Legislature enacted PL 2009 chapter 211, a resolve "To Review the Waste Motor Oil Disposal Site Remediation Program." The resolve directed the department to form a stakeholder group to address a \$15,500,000 shortfall in the program that funds clean-up of four legacy waste-oil sites of the Portland-Bangor Waste Oil (PBWO) Company. Funding for the program comes from "premiums" on lubricating oils that are sold in Maine, which are collected from lube-oil distributors. The resolve also directed the stakeholders to address the issue of premiums collected on lube-oil first distributed in Maine but subsequently sold out-of-state (the so-called "double taxation" issue).

I am pleased to report that the stakeholders reached substantial consensus on a compromise package to resolve both the funding short-fall and "double taxation" issue without increasing fees or jeopardizing the Finance Authority of Maine's commitments to existing bondholders. The proposed solution comprises continued enforcement by Maine Revenue Service, reducing administrative costs, loan forgiveness, payments over time, closing loopholes, tax rebates and a simplification of the entire program. The solution provides for mitigation of risks at the four PBWO sites and a full liability release for some 300 businesses, schools, municipalities and state agencies that are Potential Responsible Parties.

Please contact me at 207-287-7673 or at david.w.wright@maine.gov if you have any questions about the attached report, which contains the stakeholder's recommended legislation to fix the program.

Sincerely,

David Wright

David Wright, Director
Division of Remediation / Bureau of Remediation & Waste Management

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG, HOSPITAL ST

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143



Recommendations Concerning the Waste Motor Oil Disposal Site Remediation Program

Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

December 1, 2010

Contact: David Wright, Director
Division of Remediation
(207) 287-7673

David.W.Wright@Maine.gov

The Maine DEP acknowledges and thanks the stakeholders listed in Appendix 2 for helping to develop the recommendations in this report

Maine DEP Report to the Legislature: Recommendations Concerning the Waste Motor Oil Disposal Site Remediation Program

December 1, 2010

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I. Executive Summary

A. *The Waste Oil Site Clean-up Program*

In 2007, the Legislature established the Waste Motor Oil Disposal Site Remediation Program (the Program) at 10 MRSA § 1020-A. The Program funds the clean-up costs for eligible Potential Responsible Parties (PRPs) at four former Portland-Bangor Waste Oil (PBWO) sites in Casco, Ellsworth, Plymouth, and Presque Isle. The program allows the Finance Authority of Maine (FAME) to issue Revenue Obligation Securities (bonds) to raise money for site clean-ups. FAME repays the bonds with revenue generated from varying premiums on the distribution of certain types of lubricating oil (Table 1, page 3), which are collected by Maine Revenue Service (MRS) through its sales tax infrastructure. The Legislature intended to raise \$30,000,000 for clean-up costs at the four sites, but FAME was only able to raise half this amount in its 2009 bond issuance, due to lack of revenue in the program.

B. *Stakeholder Resolve*

Last session two bills were introduced to the Joint Standing Committee on Natural Resources (Natural Resources Committee). One was to address the funding shortfall by substantially increasing premiums on select lubricating oil. The other was to eliminate the premium levied on Maine distributors that first distribute or sell lubricating oil in Maine, but then redistribute or resell the oil in other states. This lubricating oil is subject to both the Maine premium, and a second tax in another state (the so called “double taxation” issue). As a result, the legislature directed the Department of Environmental Protection (DEP) to convene a stakeholder group (hereinafter “Stakeholders” or “Group”) and develop this report with the authority to report-out recommended legislation. Meanwhile, MRS stepped up its compliance efforts, which resulted in a significant increase in program revenue, but not enough to support bonds that could generate an additional \$15,500,000 in clean-up funds. Over the course of six months, the stakeholders reached substantial consensus on a package of recommendations that fully funds the program without raising premiums, and eliminates the “double taxation” issue. Only one stakeholder dissented from the recommendation.

C. *Stakeholder Recommendations*

Revenues into the program have increased substantially due to recent legislative changes and enhanced enforcement by MRS. Building upon this increased revenue, the stakeholders are recommending that:

- Rather than issuing further bonds, the Program fund be used for direct payments in a tiered priority approach;
- The bonds that FAME has already issued receive priority funding;

- Maine-based regional distributors now subject to “double taxation” get refunds;
- Loans under the Plymouth Waste Oil Loan Program be forgiven and unused loan funds be disbursed to the Plymouth PRPs to reimburse response costs pursuant to the program;
- Overall response costs be lowered from \$30,000,000 to \$28,378,646 through cost reductions at the Casco, Ellsworth and Presque Isle sites;
- Response costs at the Casco, Ellsworth and Presque Isle sites, which have only been incurred by DEP, be repaid over four to eight years rather than through issuing more bonds, and that FAME make repayments directly to DEP, rather than through PRPs;
- Qualifying PRPs at the Casco, Ellsworth and Presque Isle sites be expanded to all but federal agencies, and that these qualifying PRPs be issued a liability release upon partial payment;
- A loophole be closed for certain lubricating oils to prevent loss of revenue;
- The definitions in the law be updated to enhance understandability and compliance; and
- The legislature biannually determine whether premiums can be reduced or eliminated.

The proposed package:

- As the top priority, provides full and stable funding for the bonds that have already been issued by FAME;
- Provides a premium rebate for oil first distributed in Maine but subsequently sold out-of-state, including rebates for expanding Maine warehouses and for historic payments;
- Reduces costs by some \$17,500,000 over 20 years for the premium payers;
- Provides full release of liability for over 300 businesses, municipalities, schools, state agencies and individuals; and
- Mitigates risks at the four sites.

The stakeholders' recommend legislative changes to implement their proposed approach is in Appendix 3 beginning on page 21.

II. Introduction & update on revenue

A. *The Waste Motor Oil Disposal Site Remediation Program*

In 2007, the Legislature established the Waste Motor Oil Disposal Site Remediation Program (the Program - see 10 MRSA § 1020-A). The law, amended in 2008 and 2009, allows full mitigation of risks at four former Portland-Bangor Waste Oil (PBWO) sites in Casco, Ellsworth, Plymouth, and Presque Isle. The law funds the clean-up costs for eligible Potential Responsible Parties (PRPs) at these sites.

The Program entails the Finance Authority of Maine (FAME) issuing Revenue Obligation Securities (bonds) to raise money for site clean-ups. FAME repays the bonds via “premiums” of \$1.10 or \$0.35 per gallon on certain classes of lubricating oil (see Table 1), which is collected by MRS and then transferred to FAME. The Legislature intended to raise \$30,000,000 for clean-up costs at the four sites. However, a report to the Joint Standing Committee on Natural Resources dated January 15, 2010, and filed jointly by FAME, Maine Revenue Service (MRS) and Maine Department of Environmental Protection (DEP), concluded that revenues into the Program only supported bonds that provided \$14,467,118 for clean-up costs, or less than half of the funds intended by the legislature. Unfunded response costs are preventing liability releases for over 300 PRPs at Ellsworth, Casco and Presque Isle and pose a financial burden for the Plymouth PRPs.

Table 1: Current & Recommended Lube-Oil Premiums

Lube oil type ¹	Package size (gallons)	Current Premium per gallon	Recommended Premium per gallon ¹
Reclaimable Gasoline Engine Crankcase Oils	Greater than 5	\$1.10	\$1.10
Reclaimable Diesel Engine Crankcase Oils	all sizes	\$0.35	\$0.35
All other Reclaimable Motor Vehicle Oils and Lubricants	Greater than 16	\$ ---	\$ ---
	Greater than 5 to 16	\$ ---	\$0.35
	5 or less	\$0.35	\$0.35

B. *Program Background*

A history of events leading to the program, summary of the uncontrolled sites law, summary of the program mechanics, and status of site clean-ups is available in appendix 4, beginning on page 21.

¹ The stakeholders are recommending that the premium be applied to another sector and that the definitions of lubricating oil types be clarified, as discussed in section III.G beginning on page 11.

C. *Legislative Resolve to Review the Program*

As a result of the revenue shortfall described in section II.A above, a bill was introduced late in the Second Session of the 124th Maine Legislature to raise all premiums to \$1.10. Meanwhile, another bill was introduced to exempt the premium on lube-oils that are distributed through Maine but retailed out-of-state, which would have reduced revenues to the program. In response, the Legislature passed PL 2009 chapter 211, a resolve directing the DEP to form a stakeholder group to review the Program, including:

- 1) Revenue collections under the program;
- 2) Methods to enhance enforceability of payment of the premium;
- 3) Options to increase revenue to support additional bond issuances under the program; and
- 4) The premium paid for prepackaged motor vehicle oil that is stored in the State, and then sold or distributed out-of-state.

The resolve further directed the DEP to submit this report to the Legislature by December 1, 2010, with recommended legislation. The full resolve is included in Appendix 1 on page 19.

D. *Stakeholder Process*

The DEP gathered stakeholders representing sellers and distributors of lubricating oil, consumers of lubricating oil, PRPs at the waste motor oil sites, new motor vehicle dealers, FAME, MRS and all other parties that expressed an interest. A list of the stakeholders and technical supporters can be found in Appendix 2 on page 19. Ann Gosline of Gosline & Reitman facilitated the process. The group met or held conference calls monthly from May through November of 2010. Between meetings subcommittees reviewed information and developed recommendations for consideration by the full stakeholder group.

E. *Revenue Increases Since the 124th 2nd Regular Legislative Session*

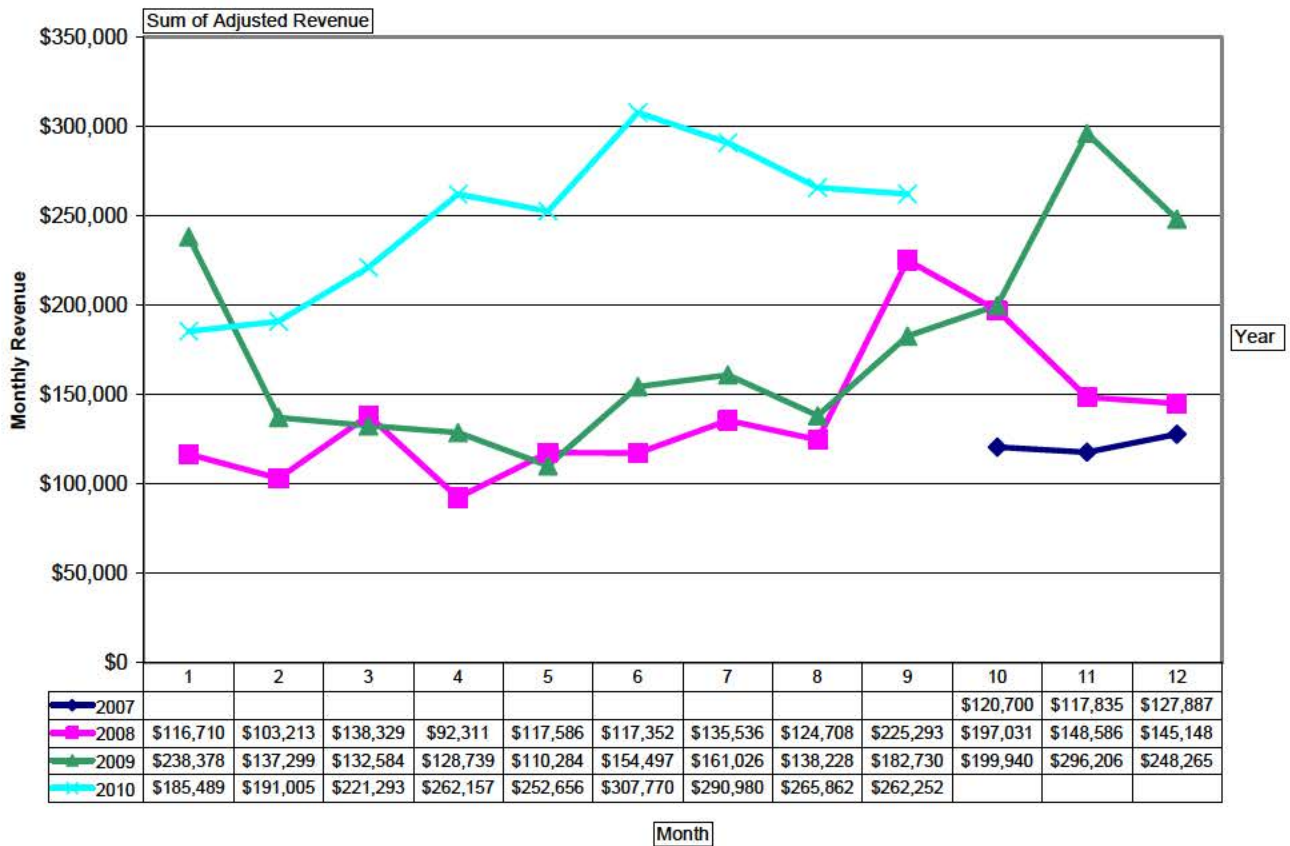
Following enhanced MRS compliance activities since the last legislative session (see section IV on page 13), revenue into the program increased markedly as compared to the same months in prior years (see Figure 1 on page 5). Monthly average revenues rose from an estimated \$156,210 to \$247,420 per month. While significantly better than when the Legislature passed the resolve, monthly revenue is still 23% short of the estimated \$319,134 per month needed to issue enough bonds to raise the full \$30,000,000 in clean-up funds for the four sites.

III. *Stakeholder Recommendations for the Program*

All but one of the stakeholders agreed to the compromise package in this section, which avoids raising premiums while still providing site clean-up, PRP liability releases, and the lifting of premiums on out-of-state sales. The plan relies on cost reductions, loan forgiveness, and payments over time. Unincorporated options considered by stakeholders are outlined in section V

beginning on page 15. The reasons the one stakeholder did not agree to this consensus recommendation are detailed in section VI, beginning on page 17.

Figure 1: Estimated Monthly Program Revenues by Year²



A. Reductions in Response Costs

Under Federal CERCLA Law (Superfund) and Maine’s Uncontrolled Sites Law³, PRPs are responsible for all response (clean-up) costs. Under the Program, premiums on the distribution of lubricating oil are used by FAME to support bonds to reimburse the PRP response costs. In order to craft a solution, the stakeholders had to first agree on how much money needed to be raised to address contamination at the four sites. The court settlement for the Plymouth site⁴ established the response costs for the Plymouth Site. The stakeholders agreed on eligible response costs for the Ellsworth, Casco and Presque Isle sites, based on the cost subcommittee recommendations, as summarized in Table 2 on page 7.

² Note: Monthly Amounts in Figure 1 are adjusted to account for MRS recovery of historic liabilities.

³ 38 MRSA 1361 *et. seq.*

⁴ The Plymouth Consent Decree, Civil No. 1:09-cv-482, U.S. District Court for the District of Maine. (aka West Site or Hows Corner Consent Decree for remedial action)

1. Plymouth Response Costs & Liability Release

The Plymouth Site Settlement⁴, established the response costs for each PRP and provides a liability release. In addition, the stakeholders agreed that the Maine National Guard, a state agency that was inadvertently omitted from the eligibility registry for the Program, should receive payment of its response costs in the amount of \$41,778.49. In September 2009, FAME issued \$14,495,000 in bonds for the benefit of the Plymouth site. From this total, \$14,467,117 was available to pay some of the response costs for eligible PRPs at Plymouth. The premiums backing the bonds were insufficient to allow issuance of bonds that would raise enough money to pay all of the eligible response costs, and the Plymouth PRPs are still owed \$6,979,106 for unreimbursed response costs. DEP also has an outstanding claim of \$546,538 in unreimbursed response costs attributed to orphan shares, which under the Plymouth settlement⁴ are only to be paid after all other response costs at the four sites have been made.

2. Casco & Ellsworth Response Costs

DEP is the only entity that has incurred response costs at the Ellsworth and Casco sites. The cost subcommittee reviewed the DEP's documentation of past and future response costs, including costs for natural resource damages at both sites. As part of the compromise for this proposal, the stakeholders agreed DEP should be compensated \$3,731,209 at Ellsworth and \$2,609,541 at Casco for its response costs.

3. Presque Isle Response Costs

At Presque Isle, DEP incurred the sum of \$32,394 in investigative costs. The stakeholders agreed DEP should be compensated for these response costs. DEP advised the stakeholders that since new evidence indicates that the Presque Isle site is only contaminated with petroleum, additional site response costs will be covered through applicable oil insurance funds.

4. Liability Releases at Casco, Ellsworth & Presque Isle

Currently a complex system determines PRP eligibility for funding under the program⁵. The stakeholders agreed that the administrative cost of determining which of the PRPs are eligible at Ellsworth, Casco and Presque Isle is not an economical use of funds. The stakeholders are recommending that, upon DEP's receipt of \$3,500,000, all PRPs currently named or unnamed will be released from liability, with the exception of federal agencies. DEP will retain cost-recovery rights against the federal agencies, which

⁵ See 10 MRSA §1020-A, subsection 5 for existing PRP eligibility requirements for funding.

will allow DEP to seek an additional \$122,703 at Casco and \$178,427 at Ellsworth for amounts not covered by the Program.

Table 2: Summary of Cost and Funding Recommendations to Remediate Four Waste Oil Sites

Site	Item	(Liability) / Revenue
Plymouth	Eligible Response Costs (less Maine National Guard costs)	\$ (21,404,444.84)
	Maine National Guard Response Costs	\$ (41,778.49)
	Estimated Bond Costs (includes \$14,467,117 in principal)	\$ (30,250,519.00)
	Orphan Share Settlement	\$ (546,537.93)
	Subtotal Costs	\$ (51,696,742.33)
	Principal from Bond Issuance	\$ 14,467,117.25
	Estimated Loan Forgiveness & Distribute Loan Fund	\$ 6,178,017.38
	Waste Motor Oil Revenue Fund	\$ 31,051,607.70
Casco	Response Costs (less NRDC)	\$ (2,232,244.01)
	Natural Resource Damage Compensation	\$ (500,000.00)
	Anticipated Settlement with Federal PRPs	\$ 122,703.32
	Waste Motor Oil Revenue Fund	\$ 2,609,540.69
Ellsworth	Response Costs (less NRDC)	\$ (3,409,636.05)
	Natural Resource Damage Compensation	\$ (500,000.00)
	Anticipated Settlement with Federal PRPs	\$ 178,427.48
	Waste Motor Oil Revenue Fund	\$ 3,731,208.57
Presque Isle	Eligible Response Costs	\$ (32,394.38)
	Waste Motor Oil Revenue Fund	\$ 32,394.38
Total* response costs for all four sites:		\$ (27,120,497.77)
Net Estimated Bonding Costs (2009 Issuance):		\$ (15,783,402.25)
Total* Costs:		\$ (43,903,899.52)
Total to be Raised From Lube-oil Premiums:		\$ 37,424,751.34
Total* to be Raised From Other Sources:		\$ 6,479,148.17
Total to be Raised:		\$ 43,903,899.52
Total estimated avoided bonding costs		\$ 15,668,918.29
*Not included in this analysis are: legal costs for PRPs, costs & payments by the non-eligible Plymouth PRPs, and clean-up costs for Presque Isle covered by the Oil Insurance Fund		

B. Forgive Loans & Distribute Other Funds to Plymouth PRPs

The stakeholders have several recommendations to address the remaining \$6,979,106 in unreimbursed response costs for the Plymouth PRPs. In 1999, the legislature established the Waste Oil Clean-up Fund⁶, administered by FAME, to provide zero interest loans to eligible PRPs at Plymouth. A key recommendation of the stakeholders is to forgive the approximately \$3,273,562 in outstanding loans issued to PRPs

⁶ See [10 MRSA §1023-M](#)

under the loan program, and to use approximately \$2,904,455 in undistributed funds to reimburse a total of approximately \$6,178,017 to the Plymouth PRPs for outstanding response costs. The remaining amount owed to the Plymouth PRPs should be addressed by distributing some \$801,089 from FAME's Waste Oil Fund, which as of November 2010 held about \$3,500,000. Taking these actions, rather than the bonding approach envisioned in the current Program, will save the premium payers about \$7,882,231 in avoided bonding costs and interest payments over 20 years.

C. *Eliminate Bonding Costs by Paying Over Time.*

The current Program authorized FAME to issue bonds to raise a lump sum to pay PRP response costs. Assuming the actions in section III.B above make the Plymouth PRPs whole, the PRPs still owe DEP \$6,919,682 for clean-ups at the four sites. The stakeholders recommend that DEP accept payment over four to seven years, rather than in a lump-sum payment, and that the Program revenues be provided directly from FAME rather than through the PRPs. This saves the premium payers approximately an additional \$7,786,687 in avoided bonding costs and interest payments over 20 years.

D. *Net Cost Savings to Premium Payers*

The negotiated eligible clean-up costs in this proposed settlement totaled \$28,133,239, or \$1,866,761 less than \$30 million anticipated by the Legislature. In addition, the premium payers will save an estimated \$15,668,918 in bond debt service for a total savings of \$17,535,679 over 20 years.

E. *Rebates for Lubricants Sold Out-of-State*

The legislative resolve asked the stakeholders to address the issue of assessment of the premium on lubricants that are first distributed in Maine, but are eventually sold out-of-state. These lubricants, primarily prepackaged, are also subject to taxes and fees assessed by the state where they are sold. The stakeholders reached consensus that the premium should not apply to these lubricants, since it is presumed that the Legislature meant to only apply the premium to lubricating oil that is sold in Maine. Further, the stakeholders recognize that the program could lose revenue from this source anyway, as the current system creates an economic incentive to move distribution warehouses out of Maine to neighboring states, along with the associated jobs.

The stakeholders considered providing a simple exemption for these products. Lube Oil distributors estimated that the revenue lost from exempting this category of product would be no more than \$65,000 per year. The stakeholders put considerable effort into finding ways to verify this volume through independent sources, but were unsuccessful as

detailed in section V.A on page 15. Such independent verification was necessary for FAME and DEP to be certain that revenues would be sufficient to fund the modified program. To address the issue of uncertainty, and to reach consensus on an overall approach, the distributors agreed to support the rebate program and priority application of revenues described in Section III.F below. The stakeholders believe that the rebate approach and the proposed prioritization of revenue payments set out in Section III.F below will effectively address the underlying issue, while providing FAME and DEP with a greater degree of certainty concerning the impact of proposed revenue changes.

F. *Priorities for Incoming Revenue:*

The stakeholders recommend that the premium revenues be distributed according to the following descending priorities, and as summarized in Table 3 below:

1. FAME Bond Payments

The highest priority for use of premium revenue is to ensure that FAME's obligations to the existing bond holders, and its administrative costs, will be met. FAME needs about \$154,000/month⁷, from the Fund to service the bond debt, plus a \$600,000 balance in the Fund as an additional safety reserve.

2. Rebates for Lubricants Sold Out of State

The next priority is to rebate up to \$65,000 to distributors for lube-oils that are subject to the premium but that are ultimately sold out-of-state. Rebates would be applied to liabilities incurred after the effective date of the change and to historic liabilities, until the \$65,000 cap was reached. If the amount requested by all dealers exceeds the amount available for distribution, then the rebate will be prorated among all qualifying dealers, and the additional liability would be addressed per section III.F.5 below.

3. Funding Plymouth PRPs

The third priority would be to reimburse any response costs to the Plymouth PRPs after loan forgiveness and disbursement of loan funds as discussed in section III.B on page 7. The amount of this priority should be approximately \$801,089.

4. DEP Response costs

The next priority of funds would be to fund up to \$1,000,000 per year in clean-up costs incurred by the DEP on behalf of the PRPs. The total reimbursable response costs⁸ for DEP is \$6,919,681.57.

⁷The amount needed for bond repayment declines over time.

⁸ Plus DEP retains the rights to recover \$301,130.79 from federal agencies for the Casco & Ellsworth sites.

5. Additional Premium Rebates

Under the fifth priority, revenue will be used to pay any outstanding premium rebates above the \$65,000 per year that are reimbursed in accordance with section III.F.2 above. Reimbursements would be made for current and historic liabilities. If the amount requested by all dealers exceeds the amount available for distribution, then the rebate will be prorated among all qualifying dealers and rebates for historic liabilities will be made in subsequent years. As Maine distribution businesses grow their out-of-state sales, there will be a directly proportional expansion in premium revenue to cover the expanded refund needs.

6. Additional Payments to DEP

After the above payments, any remaining revenue will then be applied to reducing the debt to DEP for response costs, above the \$1,000,000 per year that are reimbursed in accordance with section III.F.4 above.

7. Reduced Premium

If excess revenues are available, FAME will continue to administer them in accordance with the law in consultation with the FAME Board. As direct payments for remedial actions are completed, revenues should begin to build in the fund. The stakeholders recommend that the Legislature periodically review and determine if premiums can be reduced.

Table 3: Proposed Monthly Allotments of Revenue & Analysis of Revenue Sufficiency

Tier	Use of Funds	Monthly	Annual (=Monthly*12)
1	FAME Bond Payments	\$154,195	\$ 1,850,338
1a	Additional FAME costs		\$
2	Premium Rebate	\$ 5,417	\$ 65,000
3	Plymouth PRP reimbursements		\$
4	DEP Response Costs	\$ 83,333	\$ 1,000,000
5	Additional Premium Rebates		
6	Additional DEP Response Costs		
	Sum of above needs	\$242,945	\$ 2,915,338
	Estimated Available Revenue**	\$254,399	\$ 2,969,044
	Additional Available Capital***	\$ 11,454	\$ 137,447
** Estimated revenue is based on the last years average monthly adjusted revenue			
***Additional Capital would be used for additional FAME administrative costs, further premium rebates, response cost reimbursements, etc.			

G. Closing Loopholes

The lubricating oil industry identified two loopholes that are not currently believed to be significantly exploited, but if left unaddressed could lead to a loss of revenue in the program. These businesses also wanted to make sure that competitors did not have an unfair advantage. These loopholes have to do with container size and updates to specifications for lubricating oils, as discussed below.

1. The “5.1 Gallon Container” Loophole

The law allows some classes of bulk lube-oils to escape paying a premium. Currently, there is a premium on all reclaimable gasoline and diesel engine crankcase oils, regardless of container size. However, lube-oils for a motor vehicle’s transmission, gear box, hydraulic reservoir or differential are only subject to a premium if they are sold in containers holding 5 gallons or less (see Table 1 on page 3). This is compelling some distributors to expand container sizes to slightly above 5 gallons to avoid paying a premium on these “other” lubricating oils. To partially address this loophole, the stakeholders recommend \$.35/gallon premium on these “other” lube oils that are sold in 16 gallon containers or less.

The stakeholders determined that the most effective approach to fully close the loophole would be to assess a uniform premium on all classes of lubricating oil, but they do not recommend that approach for the reasons cited in section V.C on page 16. The stakeholders determined that very little bulk oil is currently sold in container sizes of over 5 gallons to 16 gallons, so the new premium should not economically impact current users. Rather, it would act as a deterrent to changing packaging sizes simply to avoid the premium.

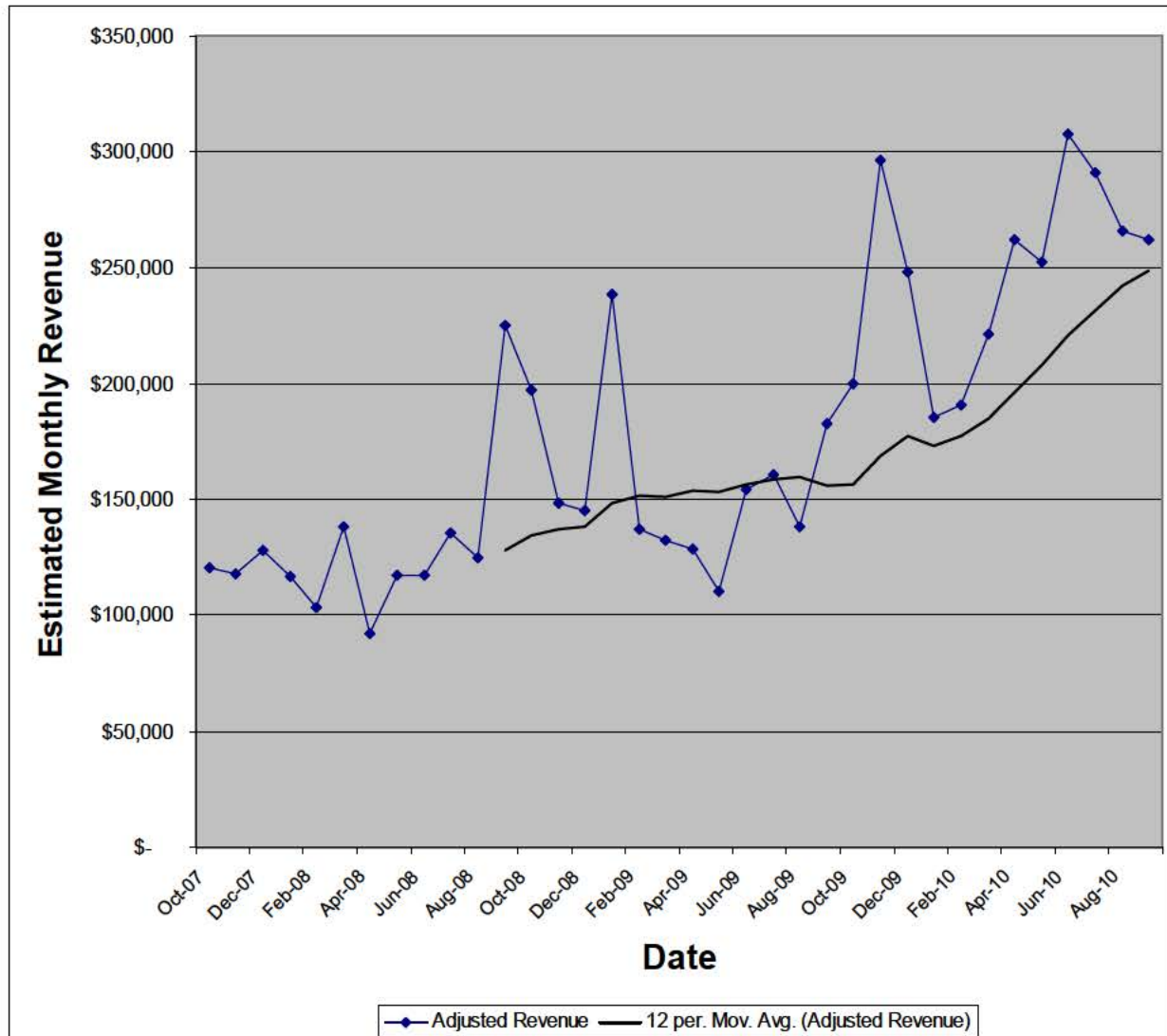
2. The Legal Definitions of Motor Oils

The stakeholders also recommend changing the definition of lubricating oils subject to the premium from gasoline and diesel “bulk engine oils” to “crankcase oils”, since these are clearer descriptions of the lube-oil that is currently subject to the premium. This will make it easier for the premium payers to understand and comply with the law. The stakeholders also recommend that the definitions be changed to include all specifications of crankcase oils. With rapid advances in product characteristics and engines, these specifications change often and quickly. To avoid new loopholes, and thus slippage in revenues and an uneven playing field, the stakeholders recommend broadening the definitions of lubricating oils to include all past and future specifications of crankcase oils, and specifications required by Original Equipment Manufactures.

H. Financial Priority of FAME

While generally increasing, the revenue stream into the program has widely fluctuated, as seen in Figure 2 below. DEP believes that the fluctuations were due to frequent changes in the Program’s legislation, conversion of the quarterly premium payment cycle to monthly, recent enhanced enforcement, and seasonable variability of consumption, among other factors.

Figure 2: Estimated Monthly Revenue with trend-line (12-month rolling average)



The stakeholders recognize the paramount importance of protecting the cash-flow to FAME to enable it to meet its obligations on existing bonds. Given the high monthly fluctuations in premium revenue, in addition to its existing cash reserve⁹, FAME needs to retain \$600,000 in the Fund to absolutely make sure that it can pay the bond holders. This is most important during the seven years that FAME is also making payments to DEP, although this will also be important in later years since the revenue forecast¹⁰ prepared for FAME is predicting that demand for use of lubricating oil will continue to decline over the 20-year bond repayment timeframe. The amount of this financial reserve considers that the bond payments are made monthly, while FAME will make payments to DEP annually.

I. *Altered Role of FAME and MRS*

Under the recommended approach, MRS would continue to collect the premium, and then transfer it to FAME. FAME would then be empowered to make payment directly to DEP, rather than on behalf of the PRPs, as with the existing Program. FAME will also be empowered to direct MRS to make rebates for premiums paid on lube oil distributed in Maine but sold Out-of-State.

J. *Legislative Biannual Review of Premiums*

The stakeholders recommend that the Joint Standing Committee on Natural Resources determine on a biannual basis whether the premium can be reduced or eliminated. This determination would occur after review of the FAME and MRS biennial report to the Committee.

IV. Enforcement by MRS

A. *MRS Premium Collection System*

Since the Waste Motor Oil Revenue Fund was created in 2007, definitions and the way the tax is imposed have changed several times. Currently the premium is imposed on the first sale or distribution of certain lubricating oil (see Table 1 on page 3) by the motor vehicle oil dealer (“vendor”), as defined. All vendors are subject to the same registration, record keeping, filing, and assessment provisions as if the premium was a sales tax. MRS reduced revenue fluctuation (see Figure 2, page 12) by having all vendors file tax returns monthly rather than some monthly and some quarterly. Vendors file the return and payment by the 15th day of the month

⁹ FAME has \$1.5 million in a capital reserve fund, and \$.8 million in a liquidity fund. Interest from these funds is used to help pay the bonds debt.

¹⁰ PB Consultant, “Premium Forecast in Support of the State of Maine Waste Motor Oil Disposal Site Remediation Program”, August 10, 2009. This report is available from FAME, and at the time of this writing, is available at:
http://www.maine.gov/dep/ftp/Waste_Oil_Remediation_Prog/Final%20Premium%20Forecast%20FAME%20Oil%20Remediation_PB_08-10-2009.pdf

following the month in which the first sale or distribution is made. Penalties and interest are imposed for failure to file a timely return or payment¹¹.

B. *Enhanced Enforcement Efforts*

MRS enhanced its compliance actions since the last legislative session. MRS added review of motor vehicle oil premiums to its standard field audit procedures¹². MRS reviewed a list of 75 vendors the industry believed were likely subject to filing, determining which were in non-compliance. This compliance work generated approximately \$73,000 in additional premiums for prior period liabilities¹³. MRS believes the few bulk oil distributors in Maine are all filing. While some prepackaged distributors may still not be filing, MRS believes that these non-filers will generate insignificant fund revenue once they are in compliance. MRS continues to follow leads.

C. *Recommended Enforcement Changes*

The stakeholders discussed several options to enhance enforcement, including a registry and changing the collection point from distributors to retailers, but ultimately determined that legislative changes were not needed. The stakeholders do, however, want to have MRS collect and report more detailed information on revenues collected per lube oil classification. Currently vendors report the premium as an aggregate total amount due on a line item on the sales tax return; vendors are not required to break the premium out by \$1.10 and \$0.35 premiums. Following stakeholder recommendations, MRS will have three distinct lines on the tax return:

1. Gasoline engine oil subject to the \$1.10 premium;
2. Diesel engine oil subject to the \$0.35 premium; and
3. An aggregate line for all other premiums at \$0.35, which would cover the newly proposed language for any motor vehicle oil product, as defined in statute, up to 16 gallons in size.

MRS does not need a legislative change to have the ability to collect this additional information on the tax form, but will need to expend \$10,000 to change its computer system. DEP has committed to providing these funds.

¹¹ Penalties and interest are not deposited into the Waste Motor Oil Revenue Fund, and so have not inflated the revenues described in section II.E.

¹² MRS generally conducts audits with a three-year look back, and motor vehicle oil premiums imposed on the motor vehicle oil dealer are just coming into that three-year time frame.

¹³ \$32,240 of which were for liabilities vendors incurred before October 2009 when the latest premium system was put into place. While much of the MRS information is confidential or reported with insufficient detail, DEP has roughly re-apportioned back payments to estimate actual premium liabilities by month, and incorporated this information into Figure 1 on page 5, and Figure 2 on page 12.

V. Other Revenue Raising Options Rejected by the Stakeholders

Prior to determining that there were sufficient revenues without raising the premium, the stakeholders considered several options for raising additional revenues, as discussed in the following sections.

A. *Predicting Revenues with Premium Change Scenarios*

In order to predict revenues into the program under various fee system options, the stakeholders reviewed several sources of information on lubricating oils sales in Maine. The stakeholders were attempting to predict what future sales will be in the various Table 1 (page 3) lubricating oil fee categories, and therefore what premiums would need to be to raise to provide the needed revenue. However, despite a high level of effort, this exercise was largely unsuccessful because, as described below, the data was not available.

The most thorough and independent study of predicted revenue remains the report that FAME contracted¹⁰ prior to issuing the \$14.5 million in bonds. That forecast projected declining oil usage over the twenty-year life of the bonds. Other useful information is market research data from the NPD group¹⁴, Harris Interactive¹⁵, and Kline & Company¹⁶, which suggests that a few years ago, about 9.46 million gallons of lube oil was sold in Maine in the transportation, consumer and industrial sectors. However, the market data categories were different from the Table 1 premium categories, so the stakeholders were not able to predict the impact of changes to the premium structure. The stakeholders also attempted, with no success, to use other data including oil industry data and Vehicle Miles Traveled data that the Maine Department of Transportation uses for its planning & conformity with the federal Clean Air Act. Data from the Federal Department of Energy dates back to 1947 and shows high monthly variability with a general decline in lube-oil use over time, but it is aggregate data that does not support analysis of changes to the current premium structure.

¹⁴ The NPD website states, "The NPD Group, founded in 1967, is the leading global provider of consumer and retail market research information for a wide range of industries. We provide critical consumer behavior and point-of-sale (POS) information and industry expertise across more industries than any other market research company." http://www.npd.com/corpServlet?nextpage=profile_s.html

¹⁵ The Harris Interactive website states, "With business and consumer research conducted in more than 200 countries, we combine the benefits of industry specialization and research expertise to deliver powerful insights... Employing one of the industry's strongest groups of experts in advanced quantitative methods, we bring sophisticated research methodologies to your study..." <http://www.harrisinteractive.com/uk/MethodsTools.aspx>

¹⁶ The Kline & Company website states, "Kline has a long track record of providing world-class services... We combine a distinctive package of industry expertise, global reach, and consulting and research capabilities that cannot be matched by our competitors. Our focus is on the chemicals and materials, consumer products, energy, and life science industries worldwide, and our knowledge extends throughout the entire value chain of each of these sectors." <http://www.klinegroup.com/about/aboutus.asp>

To help address data gaps that hinder accurate revenue forecasts, the stakeholders agreed that MRS should begin to collect and report more detailed data on premium payments as described in section IV.C above.

B. *Raise the Premium on Existing Categories*

The stakeholders discussed raising the premium on the existing narrow set of Table 1 (page 3) lubricating oils that are subject to the premium.

Although the prepackaged premium is much lower at \$0.35/gallon compared to \$1.10/gallon for gasoline engine bulk oil, the lube-oil dealers agree that an increase in the pre-package premium is less tenable than one on bulk oils. This seeming contradiction is due to several factors. Bulk oil costs significantly less per gallon¹⁷, and is more convenient. Further, customers assess price increases relative to the service that they are receiving, so that a \$1.10 increase on \$26 oil change appears less significant to customers than a 9 cent increase on a \$1.50 quart of prepackaged oil. Therefore, the prepackaged distributors were concerned about loss of sales to neighboring states, so were adamantly opposed to raising the premium on prepackaged oil above \$.35/gal.

On the other hand, raising the price on gasoline bulk oils significantly above \$1.10/gallon begins to make the prepackaged oil less expensive, so there could be an economic force to shift users to prepackaged oil. Prepackaged oil creates more oily waste containers that are not always disposed of properly, and is generally less energy efficient than bulk distribution systems. Energy efficient systems reduce pollutant emissions.¹⁸

After carefully considering the pros and cons of this change, the stakeholder group rejected this approach.

C. *Expand Types of Lubrication Oils Subject to the Premium*

A uniform rate on lube oil, regardless of package sizes, would provide the least distortion of the free market, but could not be higher than \$0.35 per gallon (see section V.B above). To maintain current revenue to the fund, if we were to equalize premiums, then the premium would need to be applied to all lubricating oils, not just motor oils that are currently subject to the premium (see Table 1 on page 3).

It was suggested that a uniform premium on all lubricating oils would result in a fairer, more streamlined process without loopholes, and the same

¹⁷ Bulk lube-oil retails at around \$4.50-\$4.60 per gallon, while pre-packaged oil retails for around \$6.00 to \$6.25/gallon.

¹⁸ See the Maine Air Toxics Strategy ([Melanie Loyzim](http://www.maine.gov/dep/air/toxics/mati_docs/MEDEP_AT_Strategy%20Final%2009.pdf), Bureau of Air Quality, Maine Department of Environmental Protection 17 SHS Augusta, ME 04333-0017), March 2009: http://www.maine.gov/dep/air/toxics/mati_docs/MEDEP_AT_Strategy%20Final%2009.pdf.

premium on prepackaged oil would eliminate shifts to prepackaged oil with its environmental downsides (see section V.B above). On the other hand, another major change in the premium structure, and an increase in distributors subject to the premium, could create another period of resistance and confusion on the part of premium payers, resulting in more non-compliance and revenue volatility. Some argued that shifting the premium from passenger motor vehicles to the industrial and transportation sectors might have adverse effects on Maine's economy. Further, agreement on the level of a flat premium is difficult because it is hard to predict revenue into the fund with such a major change. After carefully considering the pros and cons of this change, several stakeholders remained opposed, and therefore the group could not reach consensus on applying this approach.

D. Surcharge

To overcome revenue uncertainty with a change in the premium structure, the stakeholders discussed applying a surcharge. A surcharge would be triggered by insufficient funds to cover all of the program needs, similar to the surcharge on the groundwater fund. However, the stakeholders did not fully discuss this option since they reached substantive consensus on a plan that did not substantially alter the existing revenue structure.

E. Gross Sales Tax

Another option briefly discussed was to use a percentage of sales (Gross Sales Tax or GST) rather than a premium per gallon. This approach is used in Connecticut. The stakeholders did not agree to using this approach.

VI. Dissent from the Consensus Recommendation

Only one person, A Maine citizen with over 25 years experience in the bulk lube oil distribution business, did not join in the stakeholder recommendation. He would only support a solution that included a uniform premium on all lubrication products, which the stakeholders considered at length on several occasions, but finally rejected as discussed in section V.C on page 16. The dissenter otherwise supports the framework recommendations set out in Section III beginning on page 4, but believes that while the program is being streamlined, a uniform premium should also be applied to all lubrication products. (Other lubricant sellers also believe that a uniform premium on all lubrication products would be a fairer approach, but recognize that this approach was not acceptable to a range of other stakeholders at this time. They therefore agreed to support the package of recommendations in this report as a way to address the range of issues before the group.) Other stakeholders believe that the issue of a uniform premium should be reconsidered if, in the future, the Legislature determines that the premiums need further adjustment.

VII. Conclusion

In 2010, the 124th Legislature enacted PL 2009 chapter 211, a resolve “To Review the Waste Motor Oil Disposal Site Remediation Program” (Appendix 1, page 19). The resolve directed the Department of Environmental Protection to form a stakeholder group (Appendix 2 page 20) to address a \$15,500,000 shortfall in the program that is aimed at clean-up of four legacy waste-oil sites of the Portland-Bangor Waste Oil (PBWO) Company. Funding for the program comes from a “premium” on lubricating oils that are sold in Maine, which are paid by the first distributor in the state. The resolve also directed the stakeholders to address the issue of Maine distributors of lubricating oils paying fees to multiple states for oil sold out of state (the so-called “double taxation” issue).

The stakeholders reached substantial consensus on a compromise package to resolve both the revenue shortfall and “double taxation” issue without increasing fees or jeopardizing the Finance Authority of Maine’s commitments to existing bondholders. The stakeholders proposed solution comprises continued enforcement by Maine Revenue Service, cost-savings, loan forgiveness, payments over time, closing loopholes, tax rebates and a simplification of the entire program. The solution provides for mitigation of risks at the four PBWO sites and a full liability release for some 300 businesses, schools, municipalities and state agencies that are Potential Responsible Parties at the sites. As directed by the resolve, the stakeholder recommend legislative revisions to the program, which are included in Appendix 3 beginning on page 21.

Appendix 1: Resolve Directing Review of the Waste Oil Remediation Program**124th Legislature PL 2009 Chapter 211****Resolve, To Review the Waste Motor Oil Disposal Site Remediation Program**

Sec. 1 Stakeholder group. Resolved: That the Department of Environmental Protection, referred to in this resolve as "the department," shall coordinate a review of the waste motor oil disposal site remediation program under the Maine Revised Statutes, Title 10, chapter 110, subchapter 1-F, referred to in this resolve as "the program." The department shall invite the participation of a stakeholder group in the review. The group must include the State Tax Assessor or the assessor's designee, a representative of the Finance Authority of Maine, representatives of sellers and distributors of lubricating oil, consumers of lubricating oil, potentially responsible parties at the waste motor oil disposal sites identified in Title 10, section 963-A, subsection 51-E and new motor vehicle dealers and other interested parties. The review must include, but is not limited to, the following:

1. Revenue collections under the program;
2. Methods to enhance enforceability of payment of the premium pursuant to Title 10, section 1020, subsection 6-A under the program;
3. Funding options to increase revenue to support additional revenue obligation securities issuances under the program; and
4. The premium paid for prepackaged motor vehicle oil that is stored in the State, and then sold out-of-state.

By December 1, 2010, the department shall submit a written report of the findings of the review under this section and any recommendations concerning the review to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report may include suggested legislation.

Appendix 2: List of Stakeholders & Technical Support

Name		Company
Patti	Aho	Pierce Atwood LLP
Jeff	Austin	Maine Municipal Assoc
Peter	Beaulieu	Maine Revenue Services
Mark	Beliveau	Pierce Atwood LLP
Tom	Brown	Automobile Dealers of Maine
Phillip	Buckley	Rudman & Winchell
Avery	Day	Pierce Atwood LLP
David	Fenderson	Windward Petroleum
Katryn	Gabrielson	Finance Authority of Maine
Bruce	Gerrity	Preti Flaherty
Donna	Gormley	Maine DEP
Ann	Gosline	Gosline & Reitman
Kathy	Howatt	Maine DEP
Mark	Hyland	Maine DEP
Mary	James	Maine DEP
Peter	Lafond	Maine Attorney General's Office
Sara	Lewis	Maine Revenue Services
Jim	McGregor	Maine Merchants Assoc
Donald	McIntire	Dennison Lubricants, Inc
Bill	Norbert	Finance Authority of Maine
Harold	Pachios	Preti Flaherty
Heather	Parent	Eaton Peabody
Curtis	Picard	Maine Merchants Assoc
Virginia	Putnam	Rudman & Winchell
Jamie	Py	Maine Energy Marketers Assoc
John	Quirk	VIP Inc.
Jordan	Richards	Dennison Lubricants, Inc
Charles	Soltan	Charles C. Soltan, LLC, Attorney at Law
Joanna	Tourangeau	Drummond Woodsum
Carlisle	Tuggey	Preti Flaherty
Ken	Welch	NAPA Auto Parts
John	Williams	Maine Pulp & Paper Assoc
David	Wright	Maine DEP

Appendix 3: Legislation Recommended by the Stakeholders**An Act to Streamline the Waste Oil Site Remediation Program**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, waste oil was discharged between 1953 and 1981 at 4 locations in Maine: Plymouth, Casco, Ellsworth and Presque Isle; and

Whereas, the 4 sites required significant cleanup, costing some 30,000,000 dollars; and

Whereas, the costs of cleanup place an intolerable financial burden on businesses, municipalities, schools and state agencies throughout the State that contributed waste oil to one or more sites and

Whereas, the public health, safety and welfare require that the sites be cleaned up expeditiously; and

Whereas, it is in the public interest to ensure the continued financial viability of the businesses, municipalities, schools and state agencies that contributed waste oil to one or more of the sites; and

Whereas, the Finance Authority of Maine has issued revenue bonds to partially fund the cost of the cleanup of these sites but revenues are insufficient to support additional bonds to fully resolve the sites; and

Whereas, a stakeholder group convened by the department of environmental protection at the direction of the legislature has developed a complete resolution to this problem that uses revenues more efficiently rather than increasing existing premiums; and

Whereas, immediate changes to the Waste Motor Oil Disposal Site Remediation Program are necessary to implement these efficiencies; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. **10 MRSA §1020, sub-§1**, as amended by PL 2007 Ch 618 is further amended to read:

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Eligible person" means a person that is eligible, pursuant to section 1020-A, to have that person's share of response costs paid from the proceeds of revenue obligation securities issued pursuant to this subchapter or is eligible to have their share of response costs paid from the Fund as otherwise set forth in this subchapter.

~~A-1. "Bulk motor vehicle oil" means all motor vehicle oil other than prepackaged motor vehicle oil.~~

~~A-2. "Diesel engine bulk motor vehicle crankcase oil" means diesel engine bulk motor vehicle oil that is classified for use in a diesel engine crankcase by meeting the performance requirements of American Petroleum Institute beginning with CJ-4 CA standards and all preceding succeeding specifications under those standards, inclusive of all viscosity grades Original Equipment Manufacturer specific engine oils.~~

B. [Repealed]

C. "Fund" means the Waste Motor Oil Revenue Fund established under subsection 2 to be deposited with and administered by the authority.

~~C-1. "Gasoline engine bulk motor vehicle crankcase oil" means gasoline engine bulk motor vehicle oil meeting that is classified for use in a gasoline engine crankcase by meeting the performance requirements of American Petroleum Institute SM beginning with SA standards through current standards, inclusive of Original Equipment Manufacturer specific engine oils, and International Lubricant Standardization and Approval Committee GF-4 GF-1 standards and all preceding specifications under these through current standards, inclusive of all viscosity grades Original Equipment Manufacturer specific engine oils.~~

D. "Motor vehicle" has the same meaning as in Title 29-A, section 101, subsection 42.

E. [Repealed]

F. "Motor vehicle oil" means any lubricating oil or other lubricant that is reclaimable and classified for use in an internal combustion engine or the transmission, gear box, hydraulic reservoir system, compressor or differential for a motor vehicle, including but not limited to natural,

synthetic and rerefined motor oils, whether or not in retail containers.

G. "Motor vehicle oil dealer" means any person, firm or corporation engaged in the business of producing, packaging or otherwise preparing motor vehicle oil for market, or selling or distributing motor vehicle oil. [2007, c. 618, §8 (NEW).]

~~H. "Prepackaged motor vehicle oil" means motor vehicle oil sold in a container with a volume not in excess of 5 gallons.~~

Sec. 2. **10 MRSA §1020, sub-§3** is amended to read:

3. Application of fund. Money in the fund must be applied to the payment of principal of, interest on ~~or~~, redemption of premiums on, or other costs of revenue obligation securities issued pursuant to section 1020-A and may, in whole or in part, be pledged or transferred and deposited as security for those securities. Money in the fund not immediately needed to meet the obligations of the authority as provided for in this subsection may be invested in such a manner as permitted by law. Any reasonable costs incurred by the authority in administering the fund or such revenue obligation securities may be taken from the money in the fund. Notwithstanding any other provision of this subchapter to the contrary, no money in the fund may be transferred from the fund or otherwise applied in any calendar year except as expressly provided in this subsection unless: (i) all amounts required, or to be required, by the trust documents securing any such revenue obligation securities to be transferred to the trustee, or to a paying agent, thereunder in such calendar year shall have been so transferred; (ii) all costs incurred, or projected by the authority to be incurred, in administering the fund in such calendar year have been funded through the transfer of such amounts to the authority; and (iii) upon completion of such transfer or other application, the remaining balance in the fund shall be no less than \$600,000.

Sec. 3. **10 MRSA §1020, sub-§3-A** is enacted to read:

3-A. Excess revenue; application. Before April 15th annually, the authority shall determine whether the fund contained money as of the preceding December 31 in excess of the amount required to be retained therein pursuant to subsection 3, referred to in this subsection as "excess revenue." Excess revenue must be used to satisfy the following obligations in the following order each year, until the excess revenue is exhausted or all such obligations have been satisfied, whichever comes first.

A. As a first obligation, an amount not to exceed \$65,000 per year for payments to eligible motor vehicle oil dealers pursuant to section 1020-C. The amount available for reimbursement shall be reported to the State Tax Assessor no later than April 15.

B. As a second obligation, reimbursement of the remaining amount due to

each responsible party at the waste oil disposal site in Plymouth pursuant to the determination made in section 1020-A subsection 4, after application of the: (i) proceeds of revenue obligation securities; (ii) amounts available from the Plymouth Waste Oil Clean-up Fund pursuant to 10 MRSA section 1023-L subsection 3-B; and (iii) elimination of loan balances under the Plymouth Waste Oil Loan program pursuant to 10 MRSA section 1023-M, subsection 4;

C. As a third obligation, transfer of \$41,778.49 to the Maine National Guard for full reimbursement of response costs at the waste oil disposal site in Plymouth notwithstanding that the Maine National Guard was not listed on the registry established by the authority pursuant to section 1020-A(7).

D. As a fourth obligation, transfer of up to \$1,000,000 per year to the Uncontrolled Sites Fund established under 38 MRSA 1364, subsection 6, until \$6,919,681.57 has been transferred for response costs incurred by the Department of Environmental Protection at the waste motor oil disposal sites as defined in subsection 963-A (51-E).

E. As a fifth obligation, an additional reimbursement from the fund to eligible dealers pursuant to section 1020-C. The amount available for reimbursement under this subsection shall be reported to the State Tax Assessor no later than April 15.

F. As a sixth obligation, an additional transfer of any remaining excess revenues to the Uncontrolled Sites Fund established under 38 MRSA 1364, subsection 6, until the amount set forth in 10 MRSA §1020, sub-§3-A-D, is paid in full.

Sec. 4. **10 MRSA §1020, sub-§6-A** as amended by PL 2009, ch 213, Pt. KKK, §2 is further amended to read:

6-A. Premium. In addition to any other tax or charge imposed under state or federal law, a premium is imposed on ~~bulk motor vehicle oil and prepackaged motor vehicle oil~~ sold or distributed in the State as provided in this subsection. A motor vehicle oil dealer that makes the first sale or distribution of ~~bulk motor vehicle oil or prepackaged motor vehicle oil~~ in the State shall pay the premium. ~~Gasoline engine bulk motor vehicle oils are subject to a premium of \$1.10 per gallon. Diesel engine bulk motor vehicle oils are subject to a premium of 35¢ per gallon. Prepackaged motor vehicle oils are subject to a premium of 35¢ per gallon.~~ The premium is calculated as follows:

a. Diesel engine crankcase oils are subject to a premium of 35 cents per gallon;

b. Gasoline engine crankcase oils sold or distributed in a container of 5 gallons or less are subject to a premium of \$.35 per gallon and Gasoline engine crankcase oils sold or distributed in a volume of more than 5 gallons are subject to a premium of \$1.10 per gallon.

c. All other motor vehicle oils that are sold or distributed in a container with a volume of 16 gallons or less are subject to a premium of 35 cents

per gallon.

All premiums must be paid to the State Tax Assessor and are subject to the administrative provisions of Title 36, Parts 1 and 3, as though they were a sales tax liability. By the 20th day of each month, the State Tax Assessor shall notify the State Controller and the Treasurer of State of the amount of revenue attributable to the premium collected under this subsection in the previous month. When notified by the State Tax Assessor, the State Controller shall transfer that amount to the fund. ~~The premium imposed on prepackaged motor vehicle oil takes effect October 1, 2009.~~

Sec. 5. **10 MRSA §1020, sub-§8**, as enacted by PL 2007, c. 618, §13, is repealed.

Sec. 6. **Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 10, section 1020, subsection 1, and subsection 6-A takes effect July 1, 2011.

Sec. 7. **10 MRSA §1020, sub-§1-A**, as enacted by PL 2007, c. 464, §6 is amended to read:

A. Pay the response costs of eligible persons; provided, however, that no revenue obligation securities may be issued after July 1, 2011 to fund such payments;

Sec. 8. **10 MRSA §1020-A, sub-§4-A-1**, as enacted by PL 2009, c. 304, §1, is repealed

Sec. 9. **10 MRSA §1020-A, sub-§4-B**, as amended by PL 2009, c. 304, , §2 is further amended as follows:

B. With respect to a waste motor oil disposal site, following the determinations made pursuant to paragraph A ~~or A-1~~, the authority shall issue a certificate of determination setting forth the amount of:

- (1) The response costs paid or to be paid with respect to that waste motor oil disposal site;
- (2) The eligible response costs with respect to that waste motor oil disposal site to be paid from the proceeds of revenue obligation securities; and
- (3) The proceeds of the revenue obligation securities to be paid to or on behalf of the responsible parties.

Sec. 10. **10 MRSA §1020-A, sub-§ 5, ¶J**, is enacted to read:

J. Notwithstanding the other provisions of this subsection, at the Ellsworth, Casco and Presque Isle waste motor oil disposal sites identified in section 963-A,

subsection 51-E, paragraphs B, C and D, eligible persons include all responsible parties except those enumerated in subsection 6.

Sec. 11. 10 MRSA §1020-A, sub-§ 9 is enacted to read:

9. Liability Releases and Covenants: For the Ellsworth, Casco and Presque Isle waste motor oil disposal sites identified in section 963-A, subsection 51-E, paragraphs B, C and D:

(1) Upon receipt by the Department of Environmental Protection of the first \$3,500,000 pursuant to section 1020, subsection 3-A, paragraphs D and F:

(a) The Department of Environmental Protection or any other agency or instrumentality of the State may not sue or take administrative action against any responsible party at a waste motor oil disposal site under any state or federal statute or common law regarding response costs or environmental conditions related to the release, threatened release or presence of hazardous substances at or from the site prior to the effective date of this paragraph, including, without limitation, past response costs, future response costs, oversight costs, natural resource damages and the cost of assessment.

(b) The State of Maine, including all of its departments, agencies and instrumentalities, shall, by and through its attorney general, execute a release in favor of all eligible persons at the sites. The release shall forever discharge and release all eligible persons from any and all claims, suits, actions, liabilities, causes of action, demands, costs, damages and expenses of any nature whatsoever, including, without limitation, past response costs, future response costs, oversight costs, natural resource damages and the cost of assessment, whether known or unknown, arising out of, directly or indirectly, a release, threatened release or presence of hazardous substances at or from the waste motor oil disposal sites listed above prior to the effective date of this paragraph; and

(c) The eligible persons at the sites are protected from contribution actions or claims regarding such sites.

(2) The State shall include a covenant not to sue and contribution protection in any consent decree or other settlement agreement entered into between the State and federal agencies related to recovery of the State's response costs at the sites.

Sec. 12. 10 MRSA §1020-B, §2, as enacted by PL 2009, c213, §KKK-3, is amended to read.

2. Funding report. By February 15, 2010 and every year thereafter, the authority and the State Tax Assessor shall report the revenue collected pursuant to section 1020, subsection 6-A for the preceding calendar year. The report may be incorporated into the biennial report required under subsection 1. The joint standing committee of the Legislature having jurisdiction over natural resources

matters shall determine, beginning in 2013 and every odd year thereafter, whether the premium imposed pursuant to section 1020, subsection 6-A can be reduced or eliminated in a manner that will not adversely affect the ability of the authority to provide for the full and timely payment of the principal of, interest on and redemption premium on or other costs of all revenue obligation securities issued pursuant to section 1020-A and then remaining outstanding as the same may become due or the security therefore and may submit legislation related to the findings and report required under this subsection.

Sec. 13. **10 MRSA §1020-C** is enacted to read:

§1020-C. WASTE MOTOR OIL REVENUE FUND REIMBURSEMENT PROGRAM

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Eligible dealer" means a motor vehicle oil dealer as defined in section 1020, subsection 1, paragraph G that has reported and paid the motor vehicle oil premium imposed under section 1020, subsection 6-A on motor vehicle oil sales or distributions.

B. "Eligible premiums" means premiums that have been reported and paid by an eligible dealer to the State Tax Assessor on motor vehicle oil that was sold or distributed by that dealer outside the state during the relevant reimbursement period.

C. "Excess revenue" means the amount of funds, as determined by the authority pursuant to section 1020, subsection 3-A, paragraphs A and E.

D. "Reimbursement claims" means the value of all eligible premiums reported by all eligible dealers during a reimbursement year.

E. "Unreimbursed eligible premiums" means any properly filed eligible premium that has not been reimbursed to the eligible dealer for current or prior year obligations.

2. Annual application for reimbursement. An eligible dealer must submit a claim for reimbursement of eligible premiums, on a form prescribed by the State Tax Assessor, no later than March 31 annually. Applications filed in 2012 may include a reimbursement request for eligible premiums paid from October 1, 2009 through December 31, 2011. Reimbursement claims submitted beginning in 2013 may be made only for eligible premiums paid in the immediately preceding calendar year. All applications for reimbursement must be made under penalties of perjury. For purposes of this subsection, an application for reimbursement is considered a return, as defined in Title 36, section 111, subsection 4.

3. Calculation of reimbursement. Reimbursement of excess revenue is calculated according to this subsection.

A. Annually, no later than April 30 immediately following notification by the authority pursuant to section 1020, subsection 3-A, the State Tax Assessor shall calculate the value of reimbursement claims. The assessor shall provide reimbursement to eligible dealers no later than May 31, as determined pursuant to paragraph B.

B. For any reimbursement year, the total amount reimbursed to an eligible dealer may not exceed that dealer's unreimbursed eligible premiums. Priority is given to the oldest unreimbursed eligible premiums in succession until all eligible premiums have been reimbursed. The amount of reimbursement for each eligible dealer is calculated as follows: The Assessor shall reimburse each eligible dealer for any reimbursement year an amount equal to a fraction, the numerator of which is the total amount of each eligible dealer's eligible premium and the denominator of which is the total amount of reimbursement claims for the same reimbursement year, the result of which is multiplied by the amount determined as available by the Authority pursuant to section 1020, subsection 3-A. Interest is not due on any reimbursement made to an eligible dealer pursuant to this section.

Sec. 14. 10 MRSA §1023-L sub 3-B is enacted to read:

3-B Final use of funds by the authority. The authority shall ascertain the balance in the fund as of the effective date of this amendment, and thereafter disburse such amount to eligible persons at the waste motor oil site in Plymouth in accordance with the certificate of determination pursuant to section 1020-A subsection 4. The authority shall disburse such amount to the named eligible persons on a pro-rata basis.

Sec. 15. 10 MRSA §1023-L, as amended by PL 2007, c. 464, section 8, is repealed effective December 31, 2012.

Sec. 16. 10 MRSA §1023-M subsection 4 is enacted to read:

4. Elimination of loan balances: The authority shall ascertain the outstanding loan balance of each borrower under this program as of the effective date of this amendment and each outstanding loan balance shall thereafter be treated as if the loan funds were a grant to the borrower from the authority and a borrower shall have no further obligation to the authority related to the loan balance, nor shall the authority have any further obligation under the program except to release and discharge any corresponding loan collateral.

Sec. 17. 10 MRSA §1023-M, as amended by PL 2007, c. 479 and as herein amended, is repealed effective December 31, 2012.

Sec. 18. 36 MRSA §144, sub-§2, ¶A is amended to read:

A. Subsection 1 does not apply in the case of premiums imposed pursuant to Title 10, section 1020, subsection 6-A, sales and use taxes imposed by Part 3, estate taxes imposed by chapter 575, income taxes imposed by Part 8 and any other tax imposed by this Title for which a specific statutory refund provision exists.

Sec. 19. 36 MRSA §191, sub-§2, ¶RR is enacted to read:

RR. The disclosure to the Finance Authority of Maine of the cumulative value of eligible premiums submitted for reimbursement pursuant to Title 10, section 1020-C.

SUMMARY

The bill amends the waste motor oil disposal site remediation program and the Plymouth waste oil loan program in accordance with the recommendations of a stakeholder group convened at the direction of the Legislature to, among other things, review revenue collections under the waste motor oil disposal site remediation program.

Appendix 4: January 15, 2010 Joint Report to the Legislature on the Waste Motor Oil Disposal Site Remediation Program

Report to the Joint Standing Committee
on
Natural Resources

Waste Motor Oil Disposal Site Remediation Program

January 15, 2010

Submitted by:
Finance Authority of Maine
Department of Environmental Protection
Maine Revenue Services

1. Introduction

In accordance with 10 MRSA § 1020-B¹⁹, this constitutes the:

1. Second biennial joint report of the Finance Authority of Maine (“FAME”) and the Maine Department of Environmental Protection (“DEP”) regarding the Waste Motor Oil Disposal Site Remediation Program (the “program”); and
2. The first annual joint report of FAME and the State Tax Assessor, by and through Maine Revenue Services (“MRS”). Pursuant to 10 MRSA §1020-B(2), FAME and the State Tax Assessor may submit their annual report as part of the FAME-DEP biennial report in years in which the biennial report is due.

The report consists of:

1. A brief history of the events which led to the creation of the program, provided by DEP;
2. A summary of the related hazardous waste law provided by DEP;
3. A summary of the program and status report of the program provided by FAME;
4. DEP’s status report on the four waste motor oil disposal sites subject to the program;
5. FAME and MRS’s report of revenues collected through calendar year 2009; and
6. Conclusion.

Agency contact information can be found on page 8.

2. History of the Portland Bangor Waste Oil Company (DEP)

Beginning in 1951, Mr. George West (now deceased) began operating a waste oil recycling business known as the Portland-Bangor Waste Oil Company (PBWO). The company collected used motor oil from military bases, auto dealerships, municipalities, agencies of the state and federal government, local garages, industries, school districts, and utility companies throughout

¹⁹ **10 MRSA §1020-B. Status reports**

The following reports related to the waste motor oil disposal site remediation program under section 1020-A must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources matters.

1. Program report. By January 15, 2010 and every 2 years thereafter, the authority and the Department of Environmental Protection shall report on the status of the waste motor oil disposal site remediation program under section 1020-A.

2. Funding report. By February 15, 2010 and every year thereafter, the authority and the State Tax Assessor shall report the revenue collected pursuant to section 1020, subsection 6-A for the preceding calendar year. The report may be incorporated into the biennial report required under subsection 1. The joint standing committee of the Legislature having jurisdiction over natural resources matters may submit legislation related to the report required under this subsection.

Maine and other parts of New England. The waste oil was stored in tanks in the Town of Wells, and then the operation expanded to at least four other locations in Maine: Casco, Ellsworth, Plymouth, and Presque Isle. Sometimes the waste-oil was contaminated with used solvents. PBWO used settling tanks to stratify the used oil, decanting the lighter oil and selling it as a fuel supplement, while selling the heavier oils as dust suppressant on dirt roads. However, some of the waste oil and solvents were spilled or improperly disposed of at the five sites, contaminating soil and groundwater. George West ceased operation of the PBWO in 1988.

3. The Uncontrolled Hazardous Substances Sites Law (DEP)

To address pre-existing contamination at sites like PBWO, in 1983 the Maine Legislature created the Uncontrolled Hazardous Substance Sites Program (Uncontrolled Sites Program)²⁰. Under the Uncontrolled Sites Law:

- Hazardous substances are broadly defined to include hazardous wastes, waste oil and most other pollutants;
- DEP is authorized to designate locations where hazardous substances are located as Uncontrolled Hazardous Substance Sites;
- DEP is authorized to investigate and clean up uncontrolled hazardous substance sites, or to require responsible parties to undertake the cleanup;
- DEP is authorized to recover the cost of investigations, cleanup and other “response costs” from responsible parties. Liability is joint and several;
- Responsible parties are individuals or companies that:
 - Owned or operated the site at any time after the hazardous substance arrived there;
 - Generated the hazardous substances handled at the site; or
 - Transported the hazardous waste to the site.

The DEP obtained all of the business records of the PBWO, and was able to identify hundreds of former customers as Potential Responsible Parties (PRPs) for the purpose of recovering its cleanup expenditures. The DEP is obligated to investigate and remediate over a thousand potential uncontrolled sites in the state, and aggressively pursues cost recovery from PRPs at these sites because it is the primary source of funding available for the work. Hazardous Waste Bonds to undertake these activities have dwindled in recent years, and there is no other revenue stream to fund the Uncontrolled Sites Program.

4. The Waste Motor Oil Disposal Site Remediation Program (FAME)

In 2007, at the urging of affected Maine businesses, the Maine Legislature established the Waste Motor Oil Disposal Site Remediation Program in 10 MRSA § 1020-A. The law, amended in 2008 and 2009, is intended to help eligible PRPs pay their share of response costs associated

²⁰ 38 MRSA §1361 *et seq.*

with the cleanup of the four PBWO sites in Casco, Ellsworth (the Robbins property), Plymouth (the Hows Corner Superfund Site), and Presque Isle.²¹

The law authorizes FAME to pay the past and future response costs of certain PRPs including the following types of businesses:

1. State licensed new car and truck dealers;
2. State licensed used car and truck dealers;
3. Some commercial auto repair shops;
4. Some fleet auto repair shops;
5. Some shops that performed repairs on some special or other mobile equipment; and
6. Parties that sent 110 gallons or less of waste oil to a site.

The program authorizes FAME to issue up to \$30,000,000 in revenue obligation bonds with the state's moral obligation to fund the response costs of eligible PRPs at the sites. FAME also is authorized to issue up to \$5,000,000 in bonds as capital reserve funds for the bonds issued to pay response costs. The bond payments will be made with revenues collected originally from a premium on motor oil changes that was effective from October 1, 2007²² until July 31, 2008, and then from a premium collected on the sale of bulk motor vehicle oil beginning August 1, 2008,²³ and, effective October 1, 2009, from a premium collected on the sale of pre-packaged motor oil, as well.²⁴ The revenues are deposited in the Waste Motor Oil Revenue Fund established under 10 MRSA §1020.

On September 30, 2009, FAME issued its \$14,495,000 Finance Authority of Maine Waste Motor Oil Revenue Bonds 2009 Series A (Federally Taxable) (the "2009 Bonds"), of which \$14,467,117.50 is available for the benefit of the Plymouth site. The Certificate of Determination issued by FAME in connection with the bond closing found that the total response costs of the Plymouth PRPs was \$21,417,185.93, but the amount of the issuance was reduced in large part by the lack of revenues to support any more debt. Issuance of the bonds entailed, among other steps required for statutory compliance, issuing an RFP for underwriting services and selecting an Underwriter (Stern Brothers & Co., St. Louis, MO); issuing an RFP for trustee services and selecting a Trustee (Bank of New York Mellon, Boston, MA); selection of Underwriter's counsel by the Underwriter (Preti, Flaherty, Beliveau & Pachios, Augusta, ME); selection of Issuer's bond counsel (Hawkins, Delafield & Wood, New York, NY); and issuing an RFP for retail co-manager services and selecting retail co-managers (Edward Jones and Wachovia Bank, National Association).

²¹ The DEP and PRPs had already reached agreement on expenditures for the fifth site in Wells, facilitated in part by a grant program administered by FAME.

²² Pursuant to P.L. 2007, chapter 464, section 6.

²³ Pursuant to P.L. 2007, chapter 618, section 11.

²⁴ Pursuant to P.L. 2009, chapter 213, Section KKK. This legislation became effective May 28, 2009, at which time the provision expanding the definition of motor vehicle oil subject to the premium also became effective. The effective date for the implementation of the premium on pre-packaged motor oil was established as October 1, 2009. Since the oils and lubricants captured by the expanded definition of motor vehicle oil are only sold and distributed as pre-packaged motor vehicle oil, and not as bulk, the premium on the new oils and lubricants also became effective October 1, 2009 as a practical matter.

It was originally anticipated that the bonds would be issued in tranches, or series, as statutory pre-conditions at each site were met. However, developments leading up to the issuance of the 2009 Bonds suggest that current revenues, even as amplified by the expanded premium which became effective October 1, 2009, will be insufficient to fully cover response costs at all four sites. The original per-motor-vehicle oil change fee of \$1-\$3 (depending on vehicle size) did not generate revenues projected by the Maine Auto Dealers Association and also proved to be administratively burdensome for many small businesses. Enforcement by MRS was also difficult, due to the number of entities collecting and paying the premium. It is thought that the projections may have fallen short due in part to an underestimation of the “do-it-yourself” factor. The per-motor-oil-change premium was repealed and replaced with a premium on the first sale or distribution of bulk motor vehicle oil of \$1.10/gallon for gasoline engine oil and \$.35/gallon for diesel engine oil. Again, those revenues did not meet expectations as calculated by the Maine Auto Dealers Association. In 2009, the revenue stream was amended a second time, to expand the definition of motor vehicle oil and expand the premium to sales of prepackaged motor oils, effective October 1, 2009. As a result of the uncertainty around the revenue stream, FAME engaged PB Consult, a division of PB Americas, Inc., to conduct a revenue forecast over a twenty year period, prior to issuing the 2009 Bonds. The revenues forecasted to be generated were taken into account in determining the amount of the 2009 Bonds. Current revenues are not anticipated to be sufficient to support the original anticipated \$30,000,000 capacity of the program. Among other factors, it was determined that increased vehicle efficiency and lubricant efficiency would drive down purchases of motor vehicle oils. As a result, FAME does not anticipate the issuance of additional bonds to complete payment of response costs at Plymouth or to pay response costs at the other sites unless sufficient revenues are generated.

In 2009, when it became apparent that the revenues would not support a bond issuance for the total response costs of the Plymouth PRPs, FAME promulgated an agency rule. Among other provisions, Chapter 321 of the Rules of the Finance Authority of Maine establishes a procedure for prorating available funds among eligible parties.

5. Activities and Eligible Expenses at the Waste Motor Oil Disposal Sites (DEP)

At this time, DEP is undertaking the following cost-recovery actions at the four sites subject to the Waste Motor Oil Disposal Site Remediation Program.

Plymouth (aka Hows Corner Superfund Site). The Plymouth site is located off Route 7 in Plymouth. In the 1990s, DEP and EPA removed highly contaminated soil and installed a public water system in the area. DEP and EPA are finalizing an agreement with the PRPs in which the PRPs will install a system to control the spread of groundwater contamination. Concurrently, DEP and the PRPs are finalizing a Natural Resource Damage settlement for contaminated groundwater below 200 acres in the area. The final settlement was lodged in federal court in December of 2009 and, when approved (“entered”) by the court, will finally resolve the liability of some 432 PRPs at the site. After entry, FAME will disburse the bond proceeds to fund the settlement for the future response costs of qualifying PRPs. This final settlement was only made possible by the 2009 Bonds.

Ellsworth (aka Robbins Property). At the Ellsworth site, located off Route 1A, contaminated groundwater has spread to nearby homes and a vocational school some 2,200 feet away. In 2002 DEP removed the highly contaminated soil from this site, which was a continuing source of pollutants to groundwater, and has been monitoring groundwater at and around the site. DEP also supplied filters on impacted wells, until the area can be supplied by a waterline extension, which is scheduled for the fall of 2010. DEP is also determining appropriate compensation for natural resource damages.

In January 2009, DEP notified some 223 PRPs of their potential liability for clean-up of the site, and on March 4, 2009, DEP held a meeting with the PRPs, which was also attended by FAME, to begin negotiations of a final site settlement. The PRPs declined to form a negotiating group, in large part because the Plymouth settlement had not been reached, and it appeared then that Plymouth response costs could use up the entire bond proceeds available.

Since that time, FAME has issued the Certificate of Determination and the 2009 Bonds for Plymouth, resulting in an approximate \$7 million shortfall to Plymouth PRPs. On top of this, DEP anticipates that eligible response costs at the Ellsworth site will be about \$3.4 million. DEP intends to move to final resolution of costs and liability at this site during the winter and spring of 2010.

Casco. The Casco site is located on Tenney Hill Road off Route 11. In 2002 and 2003, DEP removed the highly contaminated soil from the Casco site and has been monitoring groundwater at and around the site. DEP's next steps are to use deed restrictions to prevent exposure to contaminated groundwater and to determine appropriate compensation for natural resource damages. DEP is pursuing settlement of this site parallel with the settlement of the Ellsworth site. In January 2009, DEP issued Notices of Potential Liability to some 194 PRPs and invited them to a February 25, 2009 meeting to discuss settlement, which was also attended by FAME. As with Ellsworth, the PRPs declined to form a negotiating group until there were better assurances that eligible costs would be covered by the program. DEP estimates that response costs at Casco will be about \$2.6 million. DEP intends to move to final resolution of costs and liability at this site during the winter and spring of 2010.

Presque Isle. After conducting an initial investigation, DEP has determined that the site does not appear to pose an imminent and substantial danger to people currently drinking the area groundwater. Subject to sufficient funding, DEP will continue to assess the long-term risk posed by this site and appropriate remedial options. While DEP possesses a trailer load of Portland-Bangor Waste Oil Company records, these records have not been systematically reviewed to develop volumetric rankings as they were for the other three sites. Under the current law, this ranking will need to be done before FAME can disburse funds to cover response costs, but it may cost over \$750,000 to conduct this research. If this statutory requirement was eliminated, it would not endanger public health or increase costs to the PRPs. Although it is difficult to accurately assess total cost at this stage of the investigation, DEP's best estimate is that work at this site will cost less than \$2 million.

6. Waste Motor Oil Revenue Fund (FAME and MRS)

Revenues collected per month by the State Tax Assessor and deposited to the Fund to date (unaudited):

2009

November	\$289,788.44
October	\$203,522.57
September	\$182,730.18
August	\$138,228.30
July	\$161,025.61
June	\$154,497.33
May	\$106,701.51
April	\$128,739.27*
March	\$129,001.43
February	\$133,717.18
January	\$234,795.36**

* The amount actually transferred to the Fund (in June 2009) included an additional \$739 attributable to the prior premium.

2008

December	\$141,566.10
November	\$145,003.60
October	\$193,449.11
September	\$221,711.09
August	\$121,125.51
July	\$135,536.00
June	\$117,352.00
May	\$117,586.00
April	\$ 92,311.00
March	\$138,329.00
February	\$103,213.00
January	\$116,710.00

2007

December	\$127,887.00
November	\$117,835.00
October	\$120,700.00*

* This reflects the amount collected, although the amount actually transferred to the Fund was decreased by \$11,000 (to \$109,700) as a result of a one-time payment to MRS for its administrative costs, as authorized by the enabling legislation.

Revenues collected in a given month are due to the state by the 15th of the following month and are deposited in the Fund at the beginning of the next month (for example, November 2009 revenues are deposited to the Fund in January 2010).

7. Conclusion

When passing the original program legislation, the Legislature intended to raise \$30,000,000 to cover all of the estimated response costs of eligible PRPs at the four eligible sites. The program recently led to the successful resolution of liability for some 432 PRPs, including many small businesses, at the Plymouth site. DEP's latest estimates for eligible response costs for each site in the program are as follows:

Site	Current DEP Estimate of Cost
Plymouth (Hows Corner)	21,417,186
Ellsworth	3,420,360
Casco	2,644,702
Presque Isle	2,000,000
Total Costs	29,482,248

The 2009 Bonds generated \$14,467,117.50 for eligible response costs, which will only partially fund the Plymouth PRPs. This is approximately \$15 million less than currently projected needs for all four sites.

For Further Information

Elizabeth L. Bordowitz
 Chief Executive Officer
Finance Authority of Maine
 PO Box 949
 5 Community Drive
 Augusta, ME 04332-0949
 207-623-3263 ext. 3502
ebordowitz@famemaine.com

Peter B. Beaulieu, Director
 Sales, Fuel and Special Tax Division
Maine Revenue Services
 24 SHS, Augusta, ME 04333-0024
 207-624-9732
peter.b.beaulieu@maine.gov

David W. Wright, Director
 Division of Remediation, BRWM
Maine Department of Environmental Protection
 17 SHS, Augusta, ME 04333-0017
 207-287-7673
david.w.wright@maine.gov

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