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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

February 27, 2006

The Honorable Scott Cowger
The Honorable Theodore Koffman
Joint Standing Committee on Natural Resources
Room 214 Cross Office Building
Augusta, Maine 04333

Dear Senator Cowger, Representative Koffman, and Members of the
Committee:

Attached please find the annual report for the Maine Environmental
Protection Fund (MEPF) for FY2005. The MEPF is the administrative
account which receives funds from several of our largest licensing and
compliance programs as well as other activities. Seventy-one positions are
supported by the MEPF.

Fees are sufficient to support program activities through the completion of
the current biennium.

Please let us know if you wish us to meet with you to discuss this report.

Sincerely,

David P. Littell
Commissioner

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**REPORT TO THE
NATURAL RESOURCES COMMITTEE
SUMMARIZING THE REVENUES
AND EXPENSES BY PROGRAM
WITHIN THE MAINE ENVIRONMENTAL
PROTECTION FUND**

FOR FISCAL YEAR 2004 – 2005

**MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

February 2006

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

INTRODUCTION

The Maine Environmental Protection Fund law, 38 MRSA Sections 351 to 354, establishes and sets limits on a number of fees for licenses and sets out other requirements for the administration of the fees and the Maine Environmental Protection Fund (MEPF). This annual report provides a summary of Fund revenues and expenses for FY2005. The report also summarizes the major fee categories by bureau, briefly indicating the purpose, source, and status of the fee categories.

Along with General Fund appropriations and various federal grant programs, the fees provide the revenues that support licensing and compliance functions in the following areas: air emissions, overboard wastewater discharge systems, site location of development; borrow pits; wastewater treatment; storm water run off; natural resources protection; asbestos, lead, and solid waste management activities, dioxin testing of select wastewater discharges, and state review of federal dam licensing. Other programs within DEP have separate licensing schedules and accounts. The MEPF also is authorized to receive and expend other funds related to the Department's mission, such as a health and safety grant from the State Division of Employee Benefits and the revenues and expenses of a non-point source training program.

Currently the MEPF supports 16% of the Department's positions and in FY2005 represented 12.4% of the Department's expenditures, other than bond funds.

To summarize the major findings in this report:

- Revenues for the different programs within the Fund were generally realized as projected, with the exception of substantial growth in Land site licensing fees.
- Fee revenues are being properly managed and credited to the programs for which they are charged. A significant fund balance is important because of variable timing in the receipt of revenues and to support program levels during slow periods of economic growth or unanticipated program disruptions.
- Fees are sufficient to support program activities through the completion of the current biennium.
- Total legislated transfers from the MEPF to the General Fund of \$1,329,541 for FY2003 to FY2005 have seriously eroded the Fund. Transfers to the General Fund in FY06 are \$183,637 and will be approximately the same in FY2007
- Periodic fee increases or other revenues are required to maintain program levels over time as personnel and operating costs increase beyond the Consumer Price Index authorized by statute. Adjustments are also warranted as fee payers lower their discharge licensing levels.

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The programs within the Fund are managed as separate sub-accounts, with revenues generally expended within the program areas where they are earned. However, the overall cash flow of the Fund serves to buffer the varying cash flow of the individual programs as revenues may not be evenly spread throughout the year.

The following provides the overview of the Fund for the past eight years, including transfers to the undedicated General Fund.

	BEGINNING BALANCE	REVENUES	TRANSFER TO GEN FUND	EXPENSES	ENDING BALANCE
FY 94	\$736,868	\$2,579,960		\$2,524,687	\$792,141
FY 95	\$792,141	\$3,731,261		\$3,406,000	\$1,117,402
FY 96	\$1,117,402	\$4,055,518		\$4,023,227	\$1,149,693
FY 97	\$1,149,693	\$3,790,690		\$4,535,647	\$404,735
FY98	\$404,735	\$4,005,533		\$3,755,676	\$654,592
FY99	\$654,592	\$4,847,014		\$4,070,112	\$1,431,494
FY00	\$1,431,494	\$4,886,950		\$4,333,049	\$1,985,394
FY01	\$1,985,394	\$4,960,572		\$4,698,965	\$2,247,001
FY02	\$2,247,001	\$5,922,682		\$5,644,682	\$2,524,963
FY03	\$2,524,963	\$5,516,269	\$448,619	\$5,374,166	\$2,218,447
FY04	\$2,218,447	\$5,357,575	\$344,926	\$5,816,027	\$1,415,069
FY05	\$1,415,069	\$6,364,678	\$535,996	\$6,017,607	\$1,226,144

The last two pages of this report provide tables with the detailed breakdown by sub-account.

For the core licensing and monitoring activities, experience indicates that a working capital balance of at least 25% of anticipated expenditures is warranted based on cash flow and potential risks to revenues and collection operations. Fee revenue balances in relation to expenditures were about 19% going into FY2006, significantly down from the 37% going into FY2004 and 25% going into FY3005. This trend is problematic.

PROGRAM SUMMARIES

BUREAU OF AIR QUALITY

AIR FEES

FY05	Beginning	Revenue	T'fer to Gen. Fund	Expenses	Ending Balance
	(\$95,493)	\$2,209,030	(\$130,754)	(\$2,334,890)	(\$352,107)

Purpose: Air Fees support licensing and compliance activities related to regulation of stationary air emissions sources.

Source: Fees are based on the volume of certain air pollutant and toxic compound emissions.

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Status: Air fee increases were legislated in 1991 and 1993 to meet the need to process pending air licenses in a technically proficient and timely manner and to meet the requirements of the federal Clean Air Act.

From the mid-nineties on, the fee supported portion of the Air program has struggled with revenue shortfalls, increasing personnel and operational costs, and replacing field monitoring equipment that was beyond repair. Fee revenues decreased licenses by about \$50,000 annually as the "polluter pays" principle kicked in and licensees lowered their discharge levels in order to reduce their licensing costs.

Lay offs were necessary in FY1999 and filling vacancies was generally delayed to buffer cash flows. A one-time General Fund appropriation in FY2001 for capital equipment provided for the replacement of failed equipment and older equipment that could no longer be maintained. Careful budget management provided for a small positive balance at the end of FY2001.

In FY2002, the Legislature and the Administration acted to shore up the program and avoid a major shortfall of \$330,000 or more in FY2003. A position was deleted from the program, General Fund support was provided for one position and part of another one, and \$200,000 in Federal Highway Surface Transportation Program funds became available.

A negative (-\$95,493) ending balance for FY2004 did involve the timing of year end receipts, but even so, there would not have been a deficit if \$117,143 had not been transferred to address the General Fund shortfall.

In FY2005, the need for an immediate fee increase was avoided by withholding funding for a vacant meteorologist position, transferring two positions to the Groundwater Oil Clean Up Fund for gas station inspections, transferring one incumbent to a vacant General Fund position available from the Bureau of Remediation and Waste Management, and reassigning two administrative positions to broader duties as part of the Department's general administration.

The negative ending balance for Air licensing in FY05 of (\$352,107) reflects a six month delay in receiving federal grants and the department's restructuring of the Air Bureau while maintaining its core programs. By December 31, 2005, the deficit had been decreased to (\$90,961). While operational support for staff is sufficient for the biennium, the bureau still faces the problem of replacing a significant amount of older air monitoring equipment that can no longer be repaired. In addition, the current fee supported structure continues to struggle with revenue shortfalls caused by facility closures and licensed emission reductions, as it did in the mid-nineties.

AIR-DOT PLANNING AGREEMENT

FY2005	Beginning	Revenue	T'fer to Gen. Fund	Expenses	Ending Balance
	(\$112,947)	\$250,000	- 0 -	(\$286,509)	(\$149,456)

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The Air-DOT Planning Agreement reimburses the Air Bureau for air planning and modeling activities which are linked to the highway construction conformity process. DOT reimbursements will be up to \$600,000 annually beginning in FY06.

BUREAU OF LAND AND WATER QUALITY

Bureau programs supported in part by MEPF relate to Land Development, Hydropower, Waste Water Treatment, Overboard Discharge, Borrow Pits, Dioxin Testing, and Stormwater. Those activities and fees are integrated to support the various units in the bureau and could be seen as one rather than seven activities, as a primary theme is water quality protection. However, in this document, fee program areas are shown separately to reflect fee performance from the cost centers and fund use.

LAND FEES

FY05	Beginning	Revenues	Tr'fer to Gen. Fund	Expenses	Ending Balance
	373,476	\$1,359,736	(\$74,466)	(\$819,417)	\$839,329

Purpose: Land fees support licensing and compliance activities under the Site Location of Development Act and the Natural Resources Protection Act.

Source: Land fees are one-time fees derived from a wide range of permits for construction and use projects in land development.

Status: The number of land applications is affected by swings in the economy, producing an uneven and often unpredictable cash flow. After several years of growth through FY99, Land fees dropped by \$161,000 to a total of \$779,092 in FY2000 and dropped by \$99,963 to a total of \$679,129 in FY2001. In order to protect less healthy fee areas in the bureau, the bureau allocated an additional \$150,000 of indirect costs to this area in FY2001.

Land fees rebounded to \$825,191 in FY2002, with annual revenues covering all but \$9,500 of annual expenditures. In FY2003, revenues fell again to \$757,158, but covered all but \$5,000 of annual expenses. In FY2004, revenues increased to \$908,438 and rose again in FY2005 to \$1,359,736. Six months into FY2006, revenues and workload continue to reach new levels, with revenues on December 31, 2005 of \$832,353. Currently, available positions are being filled to assure timely permit processing and appropriate compliance inspections as Maine experiences a high level of development.

The December 31, 2005 balance was \$1,141,680.

Again, this program area is among the most variable with changes in the economy. High application volumes require staff to process permits in a quality and timely manner, and also require staff for compliance monitoring that lasts beyond the high application periods.

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HYDROPOWER FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	\$44,408	\$5,488	(\$7,490)	(\$23,740)	\$18,266

Purpose: Hydropower fees support the State's water quality certification of dam projects being licensed or relicensed by the Federal Energy Regulatory Commission.

Source: The fees are based on the size of the dam project.

Status: After a flurry of applications a number of years ago, few dams are expected to be licensed or relicensed in the next few years. Applications for new dams or reconstruction are episodic, but can require significant expense when they do occur. Revenues are uneven and are not enough to sustain a position.

Fees earned were only \$4,755 in FY2003. Because of the accumulated balance from prior years, \$30,000 was legislatively transferred from this sub-account to the undedicated General Fund, still leaving a healthy balance of \$57,472.

In FY 2004, fees were \$7,649 and expenses \$21,113, with an end of year balance of \$44,008.

The December 31, 2005 sub-account balance was (\$1,370), necessitating a shift in costs to other related accounts.

WATER FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	\$235,559	\$428,724	(\$21,985)	(\$501,534)	\$140,764

Purpose: Water fees support licensing, compliance, and water quality activities relating to wastewater discharges from treatment plants.

Source: Commercial, industrial and publicly owned treatment plants pay fees based primarily on the amount of pollutants discharged.

Status: The Maine Pollution Discharge Elimination System (MPDES) legislation, implemented in FY1999, provided the initial fee base to make the water licensing program self-sustaining. Like the Air Program, the fees are based on pollutants discharge level and include a base fee amount. License reductions or discontinuance, such as the closing of the Kimberly-Clark Mill in Winslow and the production reduction at the Sappi Mill in Westbrook, have the effect of eroding the licensing revenue base.

After significant effort with stakeholders and internal deliberation, administrative and legislative changes in FY 2005 have helped avoid the need for fee increases in the near term. Two positions were able to be shifted to General Fund positions available from the Bureau of Remediation and Waste Management. By this action, the department was able to reduce the amount of MPDES

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program dependence on fees from 25% to 19%, with the balance covered by General, Federal and Dedicated funds. Costs of \$25,000 annually are allocated to the MEPF Land activity to cover an appropriate part of the costs of stormwater and non-point source pollution modeling by MPDES staff; this action also relieves the stress on water fee revenues.

The December 31, 2005 cash balance was \$240,517.

BORROW PIT FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
		\$291,983	(\$5,543)	(\$108,513)	\$178,027

This program was legislatively transferred into the MEPF for fiscal year FY05. Revenues for FY05 include a beginning balance of \$165,591.

Purpose: Borrow pit fees support the development of performance standards for medium sized gravel pits and for compliance inspections.

Source: Borrow pit owners pay an initial fee with a notice to comply with the standards, and an annual fee to continue operations.

Status: The program appears stable and operates with one full time position and seasonal positions as required.

The December 31, 2005 cash balance is \$137,136.

OVERBOARD DISCHARGE LICENSING AND ANNUAL INSPECTION FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	\$108,176	\$316,889	(\$19,874)	(\$230,393)	\$174,798

Purpose: Overboard discharge (OBD) fees support licensing and inspection activities of overboard discharge systems (i.e. small discharges of treated wastewater to surface waters).

Source: The fees are paid by owners of domestic and commercial overboard discharges of partially treated wastewater to surface waters.

Status: Overboard discharges are licensed for five years; licensees pay license and inspection fees annually. The number of licensed OBD systems is decreasing steadily as the availability of State grants and the efforts of individual licensees facilitate changing systems to conventional or acceptable septic and sewer systems. This decrease in revenue base along with the significant increases in basic personal services costs resulted in legislated fee adjustments in FY1999, FY2001 and FY2004.

The fee increase of about 25% implemented in FY04 allows the program to continue the program at current levels. The fee increase was part of a legislative proposal which restructured the fees and also expedites the conversion of existing systems to conventional waste water systems. With

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that legislation, fee adjustment, and the progressive phasing out of licensed systems, it is anticipated that there will be a gradual decrease in seasonal compliance and licensing staff in the next five years, matching the decrease in field work and the decrease in revenues as systems are converted.

FY2004 revenues were \$315,345 with expenditures of \$257,231.

At this writing, there are 1,525 systems licensed under the program, a decrease of 620 since 1995.

Billings are annual in the February / March period. The December 31, 2005 balance was \$29,123 reflecting the low balances prior to the annual billing.

DIOXIN FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	\$146,254	\$195,552	-0-	(\$195,549)	\$145,257

Purpose: The fees provide for the laboratory costs of dioxin monitoring from 11 wastewater treatment facilities.

Source: The wastewater treatment plants pay on a reimbursement basis. The program is authorized to function at a level of up to \$330,000.

Status: This is a mature and stable program. The amount and timing of the fees received are based on when acceptable test results are received from the laboratories. The program functions will be changing as facilities meet testing requirements for the elimination of dioxin discharges, and expenditures will also change.

STORMWATER

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	-0-	\$8,416		(\$2,553)	\$5,863

Purpose: Supports compliance monitoring of municipalities and other jurisdictions for stormwater activities associated with their activities.

Source: 28 municipalities and 8 State and Federal entities pay an annual fee of \$300 each.

Status: While small, this is a significant program and is highlighted this year because industrial facilities have been included in the program for FY2006. The Natural Resources Committee is considering how this program should continue in the future.

BUREAU OF REMEDIATION AND WASTE MANAGEMENT

The Bureau of Remediation and Waste Management's Solid Waste, Asbestos Abatement, and Lead Abatement activities supported in part by MEPF fees are integrated to support the bureau's

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activities, primarily within the Division of Solid Waste. Fee program areas are shown separately here to reflect fee performance.

SOLID WASTE FEES

FY05	Beginning	Revenues	T'fer to Gen Fund	Expenses	Ending Balance
	\$216,653	\$664,892	(\$53,332)	(\$834,091)	(\$5,878)

Purpose: Solid Waste fees support solid waste licensing and compliance activities.

Source: Licensing fees are charged for all types of solid waste facilities and activities, including landfills, transfer and storage sites, waste processing facilities, solid waste incinerators, sludge and residuals land application sites, septage disposal sites and waste transportation.

Status: After reviewing the Department's analysis of solid waste funding in January 2003, the Legislature determined not to change the funding structure. Revenues should be sufficient to maintain current program levels through the biennium.

FY 2004 revenues were \$829,796 and expenses were \$837,724, including \$39,048 transferred to the General Fund.

This program has a large number of parties to be billed for a wide variety of separate fees. The billing process is being shifted to a monthly rather than a quarterly basis and is now utilizing the receivables module of the State's central accounting system. This should improve the consistency and management of the work process over time.

The December 31, 2005 balance was (-\$53,800). The billing cycle should provide for a positive balance within the first quarter of the calendar year.

ASBESTOS ABATEMENT FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	\$148,854	\$158,207	(\$7,481)	(\$192,051)	\$107,529

Purpose: Asbestos fees support the monitoring of asbestos abatement and containment activities and the oversight of training and certification programs for asbestos abatement professionals.

Source: Asbestos fees are received from asbestos abatement professionals and companies filing notices regarding asbestos removal and containment work. They are also collected as the result of licensing companies and certifying individuals for asbestos abatement work.

Status: FY2004 revenues were \$181,970 and expenses were \$255,249. In FY2003 and FY2004, a total of \$55,967 was transferred to the undedicated General Fund. The December 31, 2005 balance is \$53,745.

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LEAD ABATEMENT FEES

FY05	Beginning	Revenues	T'fer to Gen. Fund	Expenses	Ending Balance
	\$47,224	\$26,825	(\$2,394)	(\$53,720)	\$17,935

Purpose: Lead fees support the monitoring of lead abatement activities and oversight of training and certification programs for lead abatement professionals.

Source: Lead fees are generated by licensing companies and certifying individuals for lead removal work.

Status: This program has a very small revenue stream. There is enough experience now with the program to adjust staff and operating cost distribution, with this program bearing its fair share within the overall solid waste cost center.

The sub-account balance was sufficient to legislatively transfer \$50,354 in FY2003 to the undedicated General Fund and still leave a sound balance.

FY2004 revenues were \$32,110 with expenditures of \$53,403 and an ending balance of \$47,224.

Legislation in FY05 provided for the transfer of an administrative position from this sub-account to the department's overhead administration account. The lead sub-account now appears stable with a balance of \$24,073 on December 31, 2005.

Other Activities within the Maine Environmental Protection Fund

There continues to be a number of activities within the Fund that were independent from the basic licensing and compliance programs noted above. These activities are generally small, special purpose functions which are self-sustaining. These include:

- recoveries from uncontrolled tire stockpiles, to be used for continued tire pile abatement
- a revolving account for non-point source and other pollution prevention training activities
- Toxic Use Reduction funds from the University of Iowa administration of a federal program.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
 MAINE ENVIRONMENTAL PROTECTION FUND
 SUMMARY OF REVENUES AND EXPENSES BY ACTIVITY
 FOR FISCAL YEAR 2005

	BEGINNING BALANCE	REVENUE	TOTAL EXPENSES	PERSONAL SERVICES	ALL OTHER	CAPITAL	OTHER TRANSFERS	General Fund Shortfall	INDIRECT COST	ENDING BALANCE
AIR FEES	(\$95,493)	\$2,209,030	\$2,465,644	\$1,839,802	\$234,258	\$0	\$0	\$130,754	\$260,830	(\$352,107)
LAND FEES	\$373,476	\$1,359,736	\$893,883	\$670,357	\$61,019	\$0	\$0	\$74,466	\$88,041	\$839,329
HYDRO FEES	\$44,008	\$5,488	\$31,230	\$15,883	\$4,636	\$0	\$0	\$7,490	\$3,221	\$18,266
WATER FEES	\$235,559	\$428,724	\$523,519	\$347,097	\$93,240	\$0	\$0	\$21,985	\$61,197	\$140,764
OVERBOARD DISCHARGE FEES	\$108,176	\$316,889	\$250,267	\$174,046	\$27,061	\$0	\$0	\$19,874	\$29,286	\$174,798
SOLID WASTE FEES	\$216,653	\$664,892	\$887,423	\$694,767	\$16,137	\$24,449	\$0	\$53,332	\$98,738	(\$5,878)
ASBESTOS FEES	\$148,854	\$158,207	\$199,532	\$121,811	\$47,665	\$0	\$0	\$7,481	\$22,575	\$107,529
LEAD ABATEMENT	\$47,224	\$26,825	\$56,114	\$38,486	\$9,236	\$0	\$0	\$2,394	\$5,998	\$17,935
DIOXIN FEES	\$146,254	\$194,552	\$195,549	\$0	\$172,582	\$0	\$0	\$0	\$22,967	\$145,257
DOT FUNDS	(\$112,947)	\$250,000	\$286,509	\$249,096	\$5,519	\$0	\$0	\$0	\$31,894	(\$149,456)
STORMWATER	\$0	\$8,416	\$2,553	\$0	\$2,256	\$0	\$0	\$0	\$297	\$5,863
BORROW PIT	\$0	\$291,983	\$113,956	\$88,753	\$8,194	\$0	\$0	\$5,543	\$11,466	\$178,027
OTHER ACTIVITIES	\$303,305	\$449,938	\$647,426	\$93,685	\$287,000	\$0	\$0	\$212,675	\$54,066	\$105,817
TOTAL	\$1,415,069	\$6,364,680	\$6,553,605	\$4,333,783	\$968,803	\$24,449	\$0	\$535,994	\$690,576	\$1,226,144

Note: some totals do not add due to rounding.

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OTHER ACTIVITIES DETAIL
FOR FISCAL YEAR 2005

	BEGINNING BALANCE	REVENUE	TOTAL EXPENSES	PERSONAL SERVICES	ALL OTHER	CAPITAL	OTHER TRANSFERS	General fund Shortfall	INDIRECT COST	ENDING BALANCE
NPS TRAINING	(\$3,279)	\$6,599	\$5,332	\$0	\$4,740	\$0	\$0	\$0	\$592	(\$2,012)
NEIWPC	\$0	\$24,000	\$22,960	\$19,974	\$441	\$0	\$0	\$0	\$2,545	\$1,040
OIL	(\$4,759)	\$5,771	\$9,906	\$6,570	\$2,346	\$0	\$0	\$0	\$990	(\$8,894)
GEN. ACTIVITY	(\$83,789)	\$314,033	\$206,870	\$0	\$0	\$0	\$0	\$206,870	\$0	\$23,374
TIRES	\$209,775	\$5,000	\$208,052	\$0	\$183,560	\$0	\$0	\$0	\$24,492	\$6,723
TSOC	(\$9,047)	\$3,960	\$6,774	\$0	\$5,900	\$0	\$0	\$0	\$874	(\$11,861)
ONE STOP	\$157,800	\$0	\$108,328	\$7,474	\$78,323	\$0	\$0	\$5,045	\$17,486	\$49,472
ITRC	(\$3,990)	\$15,000	\$14,828	\$12,010	\$518	\$0	\$0	\$760	\$1,540	(\$3,818)
BIODIESEL	\$25,000	(\$22,342)	\$2,658	\$0	\$2,349	\$0	\$0	\$0	\$309	\$0
AROOSTOOK STUDY	\$271	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$271
TUR_ IOWA MONEY	(\$9,894)	\$25,000	\$18,130	\$17,411	\$384	\$0	\$0	\$0	\$335	(\$3,024)
HEALTH SAFETY	\$3,965	\$0	\$2,380	\$0	\$2,103	\$0	\$0	\$0	\$277	\$1,585
MAINE YANKEE DECOMMISSION	\$25,000	\$47,917	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$72,917
ME. YANKEE REIMBURSEMENT	(\$3,748)	\$25,000	\$41,208	\$30,246	\$6,336	\$0	\$0	\$0	\$4,626	(\$19,956)
TOTAL	\$303,305	\$449,938	\$647,426	\$93,685	\$287,000	\$0	\$0	\$212,675	\$54,066	\$105,817