

# MAINE STATE LEGISLATURE

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**DRAFT**

**Annual Report of the**

**Fund Insurance Review Board**

**Submitted to the Joint Standing Committee**

**on Energy and Natural Resources**

**February 15, 1998**

# FAME

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February 9, 1998

Senator Sharon A. Treat, Chair  
Natural Resources Joint Standing Committee  
3 State House Station  
Augusta, ME 04333

Representative G. Steven Rowe, Chair  
Natural Resources Joint Standing Committee  
2 State House Station  
Augusta, ME 04333

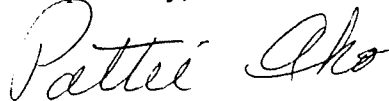
Dear Senator Treat and Representative Rowe,

I am pleased to present the Joint Standing Committee on Natural Resources with a draft copy of the Fund Insurance Review Board's Annual Report. This Report is due February 15 of each calendar year. This year, unfortunately, the Report is presented in draft form due to circumstances caused by the ice storm, which caused postponement of the regularly scheduled January meeting of the Board. Because the Board was unable to obtain a quorum at a rescheduled meeting, the Report has not received final approval. The Board will meet on March 10, 1998 to review the Report and submit it in final form.

Please, on behalf of the Fund Insurance Review Board, accept our apologies for not having the Report in final form.

If you have any questions, please do not hesitate to contact David Markovchick of the Finance Authority of Maine at (207)623-3263 or me at (207)622-5881.

Respectfully,



Patricia W. Aho, Chairperson  
Fund Insurance Review Board

This report satisfies the requirements of 38 M.S.R.A., Section 570-H, which requires the Fund

Insurance Review Board, with cooperation of the Commissioner of The Department of

Environmental Protection to report by February 15 of each year to the Joint Standing Committee

on Energy and Natural Resources. The law requires that:

The Fund Insurance Review Board, with cooperation of the Commissioner, shall report to the joint standing committee of the Legislature with jurisdiction over energy and natural resources on the Board and the Department's experience administering the fund, clean up activities, and third party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change.

This report represents the Board and the Department's experience in administering the Fund, and is divided into two sections. The first section covers the Board's activities since January 1, 1997 through the period ending December 31, 1997. The second section addresses the specific issues referred to above relating to the adequacy of the Fund.

***Mission of the Fund Insurance Review Board:***

*The Fund Insurance Review Board is established for the purpose of hearing and deciding appeals for claims-related decisions of the Commissioner of the Department of Environmental Protection and the State Fire Marshal's Office pertaining to assistance from the Ground Water Oil Clean-up Fund. The Board monitors the oil income and disbursements from the Ground Water Clean-up Fund.*

## Part I

The Fund Insurance Review Board fulfills its duties through participation of the following members:

Patricia Aho, Chair

Eugene Guilford

John Babb, Sr.

Mart Lapin

Donald C. Almy

Peter G. McConnell, Vice Chair

Vacant

Jerry Mansfield

Allan R. Ball, DEP

Steven Dodge, SFMO

### APPEALS ACTIVITIES:

During the calendar year ending December 31, 1997, the Fund Insurance Review Board processed a total of 16 new appeals. Of these, 10 appeals were heard by the Appeals Panel of the Fund Insurance Review Board. In six of those appeals, the Commissioner's/State Fire Marshal's decisions were overturned and the appellant prevailed. In four, the Commissioner's/State Fire Marshal's decisions were upheld. Three appeals were withdrawn and one appeal was dismissed. Two appeals are on hold for an inability to pay analysis by the Commissioner and one appeal is waiting to be heard. In addition to the appeals during the year, the Panel received one Motion for Reconsideration.

In carrying out its responsibilities, the full Board held five business meetings and 10 Appeals Panel hearings.

## **STRATEGIC PLAN:**

On July 31, 1996 the Fund Insurance Review Board sent to the State Planning Office its Strategic Plan. On October 18, 1996 the State Planning Office responded with its comments. The Fund Insurance Review Board responded and submitted its revised plan on January 31, 1997. The Board has since been informed by the State Planning Office that it is exempt from the Strategic Planning process. The Board, however, recognizes the importance of strategic planning and has elected to continue the process as an internal management tool.

## **LEGISLATIVE AND RULE CHANGES:**

### **Public Law 1995, Chapter 399:**

In response to several issues raised by the Board and the Department, LD.1563 was passed by the Legislature in June of 1995 (P.L. 1995, Ch. 399). The following is a summary of the major changes resulting from this law:

1. P.L. 1995, Ch. 399 authorized the Board to adopt rules, including emergency rules, to increase oil import fees when the Ground Water Oil Clean-Up Fund balance dropped below \$3,000,000. Increased fees cease when the Fund reaches a minimum sustaining balance of \$5,000,000 for three consecutive months. The legislation was prompted by growing concerns over increased demand on the fund, which dropped capitalization below a safe sustainable level. The Board was concerned that this might inhibit the State's ability to cover future clean-up costs and claims. Specifically, the Fund Insurance Review Board adopted a rule which permits an increase in fees within the limits specified in 38 M.R.S.A. §§568-B(2)(D) and 569-A(5)(E).

The increased fees remain in effect, however the Board is expected to review the situation early in calendar year 1998. The Fund has currently stabilized and the Board may recommend to the Commissioner to take action authorizing a decrease in fees.

2. P.L. 1995 Ch. 399 empowered the Fund Insurance Review Board to order an independent audit of the Ground Water Oil Clean-Up Fund. An audit of the Fund was completed in July of 1997 for fiscal year ending June 30, 1995 and June 30, 1996. Since the Fund had not previously been audited, several recommendations were made concerning the administration of the Fund. Several of those recommendations have since been implemented or are in the process of being implemented. A copy of that audit has been provided to the Joint Standing Committee on Natural Resources and Energy. An additional copy is included at the end of this Report as Exhibit A. In July of 1997, the Board again engaged the services of Schatz Fletcher & Associates to conduct an audit of the Ground Water Oil Clean-Up Fund for the fiscal year ending June 30, 1997. The audit was completed by November 15, 1997. A copy of the final audit is included at the end of this Report as Exhibit B. The audit again made suggestions for administrative improvement in the management of the Fund, but reported NO material weaknesses. As of fiscal year end June 30, 1997, the Fund had a balance of \$4,233,899.

**REPEAL OF CHAPTER 2 (Substantial Compliance Criteria), PROMULGATION OF CHAPTER 5 (Documentation Requirements or Applications to the State Fire Marshal for Coverage by the Fund); AND PROMULGATION OF CHAPTER 6 (Assessment of Ability to Pay).**

At its November meeting the Board discussed repeal of Chapter 2 and Promulgation of Chapter 5 and voted to authorize the Board's contract attorney to initiate rule-making proceedings.

Additional work needs to be undertaken on Rule Chapter 6, Section 3 pertaining to "Assessing an Applicant's Ability to Pay". Copies of Draft Rule Chapters 2, 5 and 6 are included as Exhibits C, D, and E, respectively, at the end of this report.

For informational purposes, attached as Exhibit F is a copy of an analysis of 1997 appeals by case.

**RECOMMENDATION FOR LEGISLATIVE CHANGE:**

The Fund Insurance Review Board makes no recommendation for statutory change at this time.



**PART II**  
**ADMINISTRATION OF THE FUND**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

## **PART II**

### **Administration of the Fund**

#### **Department of Environmental Protection**

##### **A. Introduction.**

Between 1987 and 1993 approximately \$5,500,000 in state bond revenues were used to fund remedial activities as the result of oil discharges at underground and aboveground oil storage sites.

Between 1990 and 1994, the Department successfully applied for about \$1,500,000 in federal funding which was used to clean up petroleum spills from underground oil storage facilities. The availability of federal funds steadily declined during that time period until funding ceased in 1994. Since that date, the Ground Water Oil Clean Up Fund has been the sole provider of funding for these remedial activities.

The Ground Water Oil Clean Up Fund ("The Fund") was established to provide for investigation, mitigation and removal of discharges or threats of discharges of oil from aboveground and underground storage facilities, including the restoration of water supplies, and to guarantee the prompt payment of reasonable damage claims resulting from those discharges.

In April of 1990, Maine law was changed to expand the use of the Fund. These changes provided assurance to owners and operators that monies will be available from the Ground Water Oil Clean-up Fund to meet state and federal financial responsibility requirements. According to state and federal law, tank owners must demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from underground oil storage facilities. Applications for the coverage of eligible clean-up costs and third party damages from underground oil storage facilities were allowed to be filed on July 1, 1990.

In 1993, further amendments allowed owners and operators of aboveground oil storage facilities to apply for "fund coverage" for oil spills discovered after April 1, 1990.

Since 1990, money has been transferred from the Fund to the Finance Authority of Maine (FAME) to assist with the removal of non-conforming oil storage facilities and replacement with conforming facilities designed to prevent oil pollution from endangering public health and the environment. FAME also provides low interest loans to finance the installation of vapor recovery equipment. FAME offers this assistance through its administration of a revolving loan program.

Under state law, transfers from the Fund will cease because the aggregate sum of \$13,000,000 has been transferred. The final transfer was made in October, 1997. Previously, an additional \$3,000,000 was transferred to the Maine State Housing Authority (MSHA) for loans to remove and replace oil storage tanks at residential dwellings. Transfers to MSHA were capped by statute at \$3,000,000. MSHA continues to offer loans and the balance of undisbursed funds is approximately \$1,900,000.

Fund revenue is derived from registration fees, penalties, oil transfer fees, reimbursements, assessments and other related fees. The maximum balance in the fund is capped by statute at \$12,500,000.

Legislation enacted during the 1995 legislative session (see PL 1995, c. 399) gave the Fund Insurance Review Board (FIRB) authority to temporarily raise oil importation fees needed to avoid a shortfall in the fund. In September of 1995, the FIRB enacted rules authorizing a fee increase. Fee payments throughout state fiscal year 1997 reflect the fee increase. The increased fee payment has remained in effect through the first half of FY 98 (July 1, 1997 - December 31, 1997), and will remain in effect until the Fund balance averages \$5 million or more for three consecutive months.

The following sections summarize the Department's experience administering the fund, including clean-up activities and third party damage claims.

B. Summary of revenues and expenditures.

Table 1 illustrates financial activity in the Ground Water Oil Clean-Up Fund for the fiscal year (FY) 1997 (July 1, 1996 - June 30, 1997). Total net income for FY 1997 was \$13,968,673.25 while expenditures totaled \$13,205,574.81. During fiscal year 1997, there was a net decrease in revenue of \$3,278,387.71, and a decrease in expenditures of \$3,192,264.28 when compared to the 1996 fiscal year. The available cash balance in the fund at the end of the fiscal year was \$4,233,897.33, while the net fund availability was \$2,537,541.23.

TABLE 1

STATEMENT OF CASH POSITION  
GROUNDWATER OIL CLEAN-UP FUND  
AT JUNE 30, 1997

<b>BALANCE FORWARD</b>	\$ 3,470,799.09
<b>INCOME</b>	\$17,890,698.85
Minus Fee Refunds	- \$ 3,922,025.60
<b>NET INCOME</b>	\$13,968,673.25
<b>EXPENDITURES</b>	
Personal Services	\$ 1,906,584.66
All Other	\$ 7,347,169.65
Capital	\$ 22,766.00
Indirect Cost Transfers	\$ 1,284,087.30
Other Transfers (Excluding FAME)	\$ 391,396.43
FAME Cash Payments (FY 96)	\$ 2,253,570.77
<b>TOTAL EXPENDITURES</b>	\$13,205,574.81
<b>CASH BALANCE (6/30/97)</b>	\$ 4,233,897.53
<b>ENCUMBRANCES (6/30/97)</b>	\$ 1,617,101.77
<b>INDIRECT COST OBLIGATION (6/30/97)</b>	\$ 79,254.53
<b>NET FUND AVAILABILITY (6/30/97)</b>	\$ 2,537,541.23

## NOTES:

INCOME REPRESENTS FEES, INTEREST, FINES, MISC. INCOME.  
OTHER TRANSFERS ARE FOR OTHER STATE AGENCIES, INTERNAL TO OTHER ACCT., I.E. BOARD, LOANS  
EXPENDITURES INCLUDE ADJUSTMENTS TO BALANCE FORWARD INCOME (CREDIT TO EXPENSES).  
CEILING ON GROUNDWATER \$12,500,000 AND SURFACE \$6,000,000.

C. Status of Applications for Coverage of Clean-Up Costs.

Tables 2, 3, and 4 reflect the status of applications for Fund coverage of clean-up costs. Applications related to underground oil storage facilities are filed with the Department of Environmental Protection. Applications related to aboveground oil storage facilities are filed with the Office of the Fire Marshal. Tables 2, 3 and 4 provide eligibility and ineligibility statistics.

**TABLE 2**

**Applications to the DEP for coverage of clean-up costs for underground oil storage facilities.**

Total Received (July 1, 1990 - Dec. 31, 1997)	469
Total Eligible	
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - December 31, 1997	107
Total Ineligible	51
Total Pending	26

**Note:** Prior to September 28, 1995, an applicant was found eligible for Fund coverage if the Department determined they were in "substantial compliance" with the applicable facility design and operation requirements. As a result of statutory changes, effective September 28, 1995, all those meeting the definition of applicant are eligible, and conditional deductibles are assessed based on a review of applicable compliance information. (See 38 M.R.S.A., § 568-A(2)).

During 1997, the Department received 64 applications for the coverage of clean-up costs. Four did not meet the applicant eligibility criteria. An increase in applications occurred after the October 1, 1997 deadline, resulting in 26 pending applications.

**TABLE 3**

**Applications to Fire Marshal for coverage of clean-up costs for aboveground oil storage facilities.**

Total Received (June 16, 1993 - December 31, 1997)	451
Total Eligible	392
Total Ineligible	40
Total Pending	12
Total Void/Withdrawn	7

During 1997, the Fire Marshal received 103 applications for the coverage of clean-up costs. The number of eligible applicants increased by 99, while 2 were determined to be ineligible. There are 12 applications pending.

TABLE 4

**Total Applications (sum of Tables 2 and 3)**

Total Received	920
Total Eligible	784
Total Ineligible	91
Total Pending	38
Total Void/Withdrawn	7

## D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 70 claims for third party damages against the Ground Water Oil Clean Up Fund.

During fiscal year 1997, the Department completed processing of 22 claims and awarded a total of \$306,580.54 in cash settlements to third party claimants. These numbers reflect only those cases where a formal claim has been filed. Many potential third party claims do not materialize because connections to existing water supplies and installation of treatment systems and individual well replacements are accomplished without filing a formal claim. Claims must be filed prior to the award of any cash settlement.

For third party claims which included a cash award over the previous eight (8) years, the average cash settlement is approximately \$9,123.14. Cash settlements reflect compensation for personal property, real property and medical expenses related to discharges of oil. Remedial costs associated with settling third party claims are tabulated separately as clean up costs. During calendar year 1997, 7 claims were dismissed, withdrawn or settled without a cash award. The average cash award to third party claimants for calendar year 1997 was \$20,438.70. Two third party claims processed in calendar year 1997 included larger than normal cash awards resulting in the increase in the average cash award from \$5,000 (1996) to the eight year average of \$9,123.14.

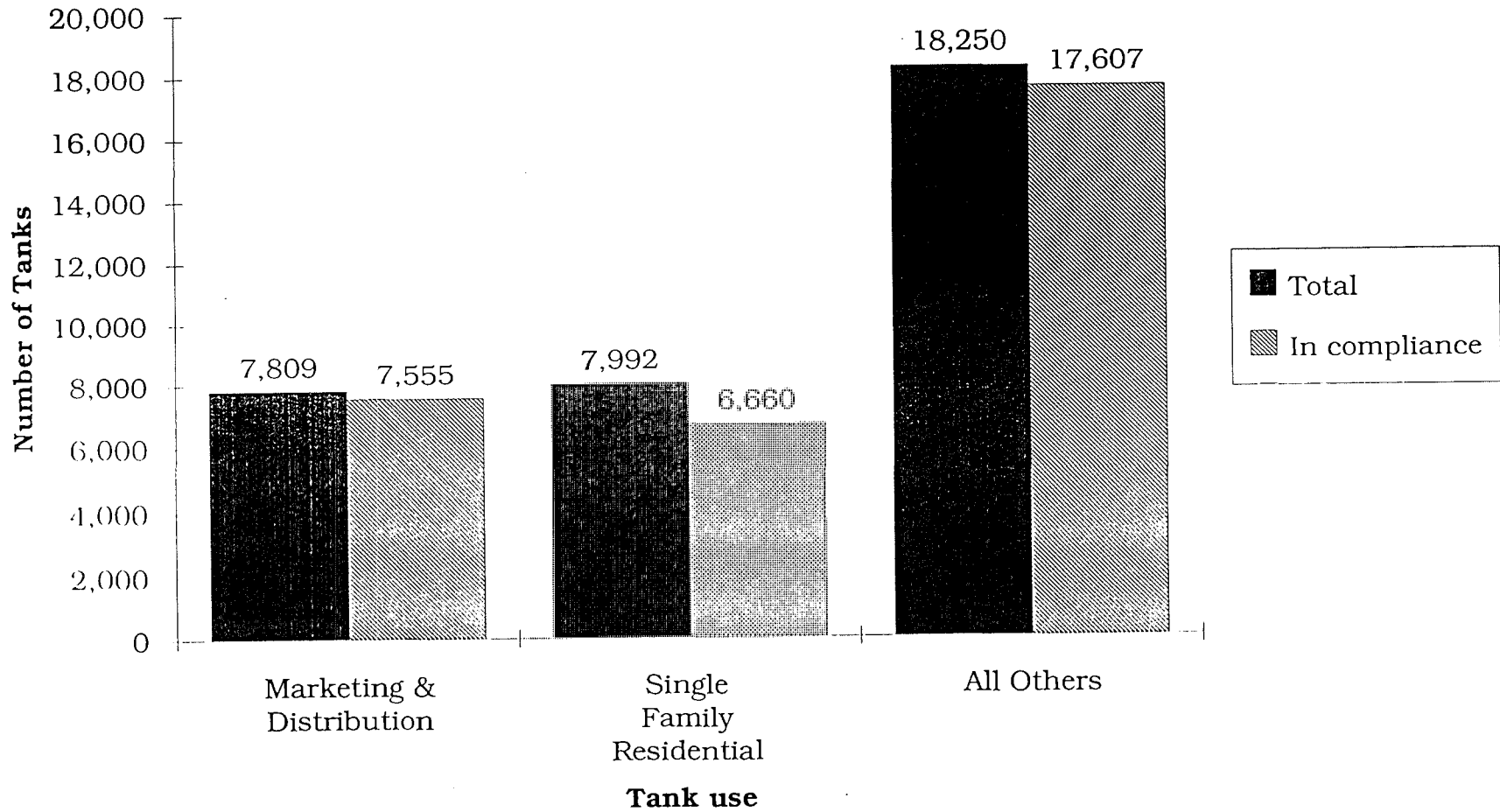
## E. Compliance with Tank Abandonment Schedule.

Title 38 M.R.S.A. section 563-A requires all underground oil storage facilities to be properly abandoned in accordance with a pre-determined compliance schedule. The schedule is based on tank age and proximity to drinking water supplies and sand and gravel aquifers.

Table 5 and 6 illustrate the record of compliance with the removal schedule mandated in statute through the end of December 1997. It should be noted that these numbers reflect only those facilities that have been registered with the Department.

# Compliance With Schedule for Abandonment of Non-conforming Underground Oil Storage Tanks

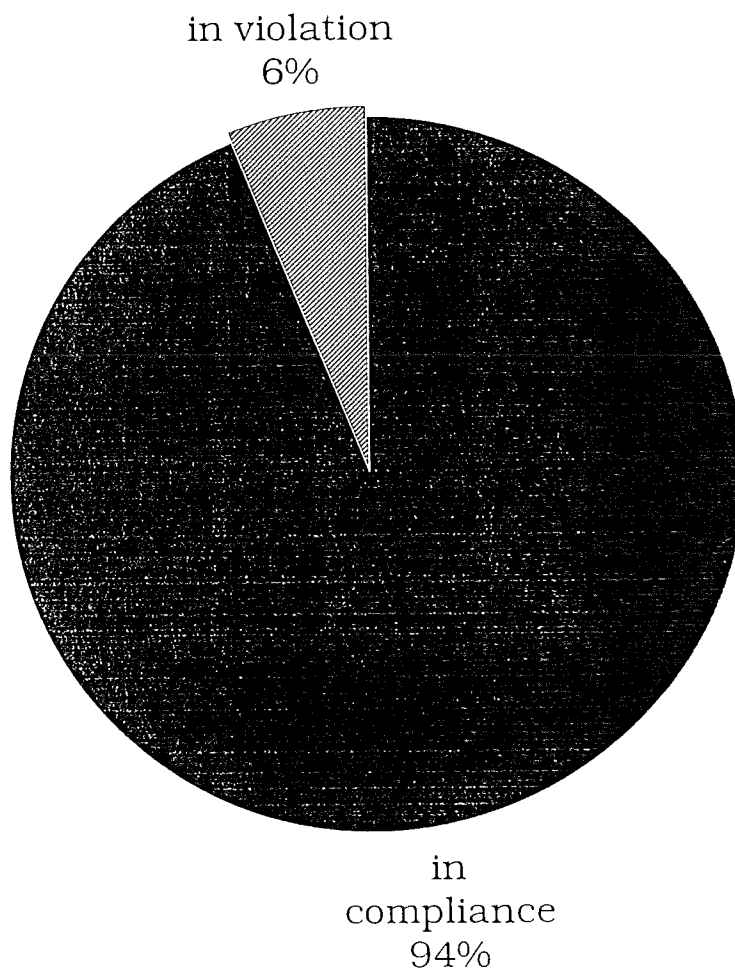
(December 12, 1997)



Note: Based on Tanks Registered with Department of Environmental Protection

## Proper Abandonment of Bare Steel Tanks

(December 12, 1997)



Note: Based on Tanks Registered with Department of Environmental Protection



Of the 33,851 registered tanks scheduled for removal through October 1, 1997, about 31,822 facilities have been properly removed or abandoned in place, and 110 tanks require proper removal or abandonment prior to the 1998 deadline. Approximately 2,029 underground oil storage tanks are in violation of previous removal deadlines. Over 1,132 of these tanks are at residential locations. As of December 31, 1997 there were approximately 2,139 tanks remaining to be properly removed or abandoned in place.

Currently, there are approximately 5,354 conforming and 2,139 non-conforming underground oil storage tanks registered in the State of Maine. Maine's current registered underground tank population is approximately 7,493.

F. Anticipated Expenses.

1. Ongoing Remediation

The Department continues to employ several measures to control remedial costs. A cost eligibility guide clarifies eligible and ineligible costs, and standardized formats for work plans and invoicing are used to promote efficient work plan approval and cost effective clean-ups. Clean-up costs over the life of the underground tank program (1990-1997), have averaged \$41,517, a decrease from \$68,935 in 1994 and \$44,950 in 1996. Clean-up costs at aboveground oil storage sites (1993-1996) average approximately \$15,350.

All remedial work at oil storage sites is prioritized by Department staff based on the potential effect to public health and groundwater resources. Contamination posing the greatest threat to drinking water or the public health is cleaned-up to "stringent" standards. Sites posing a more moderate threat are cleaned-up to "intermediate" standards. Sites posing a minimal risk are cleaned-up to "baseline" standards. This helps insure the resources of the Fund are first spent on the sites posing the greatest risk.

Currently, the Department is tracking 364 sites requiring some form of additional remedial work. Due to the inability to fully fund remedial activities at every site, work is ongoing at the top 250 sites on the priority list. The estimated budget for the work required on the top 250 sites is \$3,600,000. These sites represent a mixture of underground storage tank sites and above ground storage tank sites. These sites are primarily stringent sites, but also include intermediate and baseline sites where remedial efforts have not been completed.

Estimated budget for top 250 sites = \$3,600,000

2. Backlog of Remedial Work

Last years report indicated there were 87 sites that required additional work to characterize the site. Those sites have been characterized and prioritized for remedial action.

However work has not yet begun on 114 sites, which includes approximately 57 sites contaminated by leaking aboveground facilities and 57 sites contaminated by leaking underground facilities.

The estimated cost to clean up these sites is approximately \$3,241,419 projected as follows:

Estimated Cost for remaining 114 Sites

57 UST sites x \$41,517 (ave. cost) =	\$2,366,469
57 AST sites x \$15,350 (ave. cost) =	\$ 874,950
Total	\$3,241,419

3. Future Remediation - Underground Storage Facilities

In the future, the Department expects fewer than half of those sites suffering a discharge will require clean-up to intermediate and stringent standards. The removal schedule mandated by statute required non-conforming facilities located in sensitive areas to be the first to be properly removed or abandoned. Hence the number of new high risk sites requiring significant remediation has decreased over time.

A review of site assessments submitted to the Department over a four month period (June - October 96) after the removal of tanks storing motor fuels indicates that approximately 66% of underground storage facility sites (many sites have multiple tanks) had suffered a discharge. However, only about half of the sites require clean-up to "stringent" or "intermediate" standards. This leak rate is used to estimate the cost to complete the needed remedial work at the remaining sites where non-conforming tanks have not been removed.

There are approximately 1,512 locations in the state with underground tanks requiring removal. Assuming 66% of these have suffered a discharge and half will require the average clean-up expenditure, the estimated fund liability is approximately \$20,716,983.

$$1,512 \text{ locations} \times 66\% = 998 \text{ future sites} \div 2 = 499$$

$$499 \text{ sites} \times \$41,517 \text{ ave. cost} = \$20,716,983$$

4. Future Remediation - Aboveground Storage Facilities

There is no registration requirement for aboveground oil storage facilities, making remediation costs difficult to project.

In 1997, 81 new applications for the coverage of clean-up costs were forwarded to the Department from the Office of the State Fire Marshal.

Approximately 396 aboveground tank sites (July 1990 - December 31, 1997) have been the subject of remedial work covered by the Ground Water Oil Clean Up Fund. This represents an average of about 53 sites per year. Approximately \$1,268,021 dollars has been spent annually on remedial activities at aboveground storage tank sites from FY 95 through FY 97. Fund coverage of clean up costs is scheduled to end on December 31, 2005. We estimate the fund liability in the interim as follows:

$$\$1,268,021 \times 8.5 \text{ years} = \$10,778,179 \text{ (July 1, 05 - December 31, 05)}$$

5. Third Party Damage Claims

Third party damage claims have been received at a rate of approximately 19 new claims per calendar year over the last 8 years. The calculations below represent the anticipated costs to cover cash settlements to third party damage claims until December 31, 2005, even though existing statute calls for this service to continue after 2005.

$$19 \text{ claims/year} \times 8 \text{ years} = 152 \text{ new claims}$$

$$152 \text{ new claims} + 70 \text{ existing claims (December 31, 1997)} \times \$9,123 \text{ ave. cost} = \$2,025,306$$

6. Payments to Maine Coastal and Inland Surface Oil Clean Up Fund

Prior to June 30, 1995, a total of \$1,798,217.32 was paid out by the Maine Coastal and Inland Surface Oil Clean Up Fund for clean ups at above ground tank sites. When the use of the Fund was expanded to cover clean up costs at aboveground tank sites, prior expenditures from the Coastal and Inland Fund had to be repaid. Legislation enacted in 1995 prohibited the borrowing of funds by and between the Maine Coastal and Inland Surface Oil Clean Up Fund and the Ground Water Oil Clean Up Fund after June 30, 1995. This legislation also directed all funds borrowed before that date be repaid with interest, in as prompt a manner as revenues allow and in no event more than 2 years after the date the funds were transferred. Through June 30, 1996 the entire amount "borrowed" has been repaid. Interest charges in the amount of \$134,160.84 were transferred to the Maine Coastal and Inland Surface Oil Clean Up Fund during October 1996. Hence, this debt has been fully reimbursed and no future liability is projected.

7. Transfers to FAME

Transfers from the Ground Water Oil Clean Up Fund to FAME for the revolving loan program in the amount of \$2,418,662.94 were made during FY 97 and the beginning of FY 98. The total amount transferred for this purpose is \$13 million as specified in statute. No future transfers are authorized by statute.

8. Reimbursements to Petroleum Dealers

The statute provides that any person who prior to October 9, 1991, paid a fee and who continues to pay fees at the time the product is imported and subsequently exports the product may petition the State to reimburse the fees paid.

During FY 97, refunds from the Ground Water Oil Clean Up Fund in the amount of \$3,922,025.60 were made. This represents an increase in over \$1,000,000.00 compared to the amount reimbursed during FY 96.

From FY 94 through FY 97, the average expenditure for fee refunds was \$2,304,026. The net income referred to in Table 1 of this report is the total income minus the fee refunds. Because the net income is used to project future revenue, it is not necessary to project fee refunds as expenditures through December 31, 2005. However, multiplying the four year average by 8.5 years yields an estimate of \$19,584,221 in future refunds.

9. Projected Annual Expenditures - Minus Clean Up Expenses -Estimated

Personal Services(*)	\$ 2,056,00
Capital (FY 97)	\$ 50,000
Indirect Cost Obligation (Estimated)	\$1,195,680
Other Transfers (FY 97)	\$ 391,396
All Other (Estimated)	\$ 900,000
Total	\$4,593,076

Total Projection - (July 1, 1997 - Dec. 31, 2005) \$4,593,076 x 8.5 = \$39,041,146

Assumes expenses to be consistent with FY 97.

NOTE: Other Transfers includes transfers to Fund Insurance Review Board, Attorney General, Board of Environmental Protection, Finance Authority of Maine, Fire Marshal, etc..

\* Personal Services is projected using the statutory cap of \$2,000,000 plus the annual consumer price index (CPI). The CPI is currently 2.8% although this will fluctuate annually.

## G. Fund Adequacy.

**Total Estimated Expenses - Jan. 1998 Dec. 31, 2005**

1. Ongoing Remediation (250 sites)	\$3,600,000
2. Backlog of Remediation Work - Estimated (114 sites)	\$3,241,419
3. Future Remediation - UST - Estimated	\$20,716,983
4. Future Remediation - AST - Estimated	\$10,778,179
5. Third Party Damage Claims - Estimated	\$2,025,306
6. Payments of Maine Coastal and Inland Surface Oil Clean Up Fund	\$0
7. Transfer to FAME	\$0
Projected Annual Expenses Estimated to December 31, 2005	\$39,041,146
<b>TOTAL</b>	<b>\$79,723,774</b>

**Total Estimated Revenue - Jan. 1, 1998 - Dec. 31, 2005**

The actual revenue received during FY 97 (July 1, 1996 - June 30, 1997) was used to project revenue through December 31, 2005. Because the use of the Fund as a clean-up insurance program is scheduled to end on December 31, 2005, revenue was estimated for the first six months of FY 2006 (July 1, - December 31, 2005). For FY 2006, it was assumed for the purposes of this analysis that revenue would be half of the total revenue received in FY 97. However, 38 M.R.S.A. Section 569-A.6 provides that after the aggregate sum of \$13,000,000 has been transferred to FAME for the revolving loan program, the per barrel fee assessed must be reduced by 6¢ per barrel. This fee reduction is estimated to reduce income by \$20,639,611 from July 1, 1997 through December 31, 2005.

1. Existing Fund Availability - July 1, 1997	\$ 2,537,541
2. Estimated Available Income (FY 97x8.5) July 1, '97 - December 31, '05	\$118,733,723
3. Fee Reduction - (38 M.R.S.A. 569-A.6) July 1, '97 - December 31, '05	- \$ 20,639,611

**Total Estimated Revenue \$100,631,653**

**Note: Assumes future revenue to be consistent with FY 97. The estimate does not account for fluctuating fee assessments pursuant to Rules administered by the Fund Insurance Review Board or loss of registration fees from non-conforming tanks that are properly abandoned and no longer subject to the increased registration fee.**

## H. Conclusions.

Predicting fund solvency into the future is difficult. New demands on the fund from underground oil storage facilities are decreasing as a result of the mandatory schedule for abandoning non-conforming facilities. Statutory changes made in 1996 bar applications for reimbursement of clean-up costs from owners and operators of non-conforming underground oil storage facilities after October 1, 1998. The lack of data regarding the number, location, capacity and construction of aboveground oil storage facilities prohibits accurately projecting future Fund expenditures. The number of applications from above-ground oil storage sites is increasing and Response Services staff respond to at least one new spill each day from these facilities. The Department must continue to prioritize clean-ups and control costs to ensure the Fund remains solvent. Projecting total revenue received in FY 97 through December 31, 2005 and comparing this to estimated expenses indicate that revenue will exceed expenditures by \$20,907,879. It is unlikely however, that this surplus will be realized. Chapter 4 of Rules enacted by the Fund Insurance Review Board provide that the emergency fee increase (10¢ barrel gasoline and 5¢ barrel other refined oil/except #6) which has been in effect since September of 1995 will be reduced when the fund balance averages \$5 million or more for 3 consecutive months. **Using FY '97 oil importation records, revenue will be reduced by \$3,178,412 annually, if the emergency fees are reduced. Between July 1, 1998 and December 31, 2005 this would result in a reduction in revenue of over \$22 million.**

Due to the high incidence of leaks from aboveground oil storage systems, the legislature will consider a proposal allowing expenditures of up to \$1 million annually for the removal and replacement of those systems posing a threat to drinking water supplies. If this proposal is enacted, this will reduce the estimated surplus by as much as \$7.5 million through December 31, 2005.

The ability of the Fund Insurance Review Board to increase and decrease oil importation fees should allow for the clean-up of the known and projected oil spills from underground and aboveground oil storage facilities and prevent an excess surplus by December 31, 2005.

OSWADMI2/sjm

**EXHIBIT A**

**\_\_ Audit of Fund for fiscal years ending June 30, 1995 and June 30, 1996.**

Ground Water Oil Cleanup Fund  
FINANCIAL STATEMENTS  
For the years ended June 30, 1996 and 1995

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Independent auditors' report on compliance based on an audit of financial statements performed in accordance with <u>Government Auditing Standards</u>	
Memorandum of findings	



Schatz  
Fletcher

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Associates

CERTIFIED PUBLIC ACCOUNTANTS

To the Fund Insurance Review Board  
Ground Water Oil Cleanup Fund  
State of Maine  
Department of Environmental Protection  
Augusta, Maine

We have audited the accompanying financial statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of and for the years ended June 30, 1996 and 1995, as listed in the table of contents. These financial statements are the responsibility of the fund's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 1, the financial statements present only the activity of the Ground Water Cleanup Fund and are not intended to present fairly the results of operations of the State of Maine Department of Environmental Protection in conformity with the basis of accounting more fully described in Note 2.

As described in Note 2, these financial statements were prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the cash and fund balances of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of June 30, 1996 and 1995, and the receipts and disbursements for the years then ended on the basis of accounting described in Note 1.

In accordance with Government Auditing Standards, we have also issued a report dated May 5, 1997 on our consideration of the Ground Water Oil Cleanup Fund's internal control structure and a report dated May 5, 1997 on its compliance with laws and regulations.

Our audit was made for the purpose of forming an opinion on the financial statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection taken as a whole. The accompanying schedules of disbursements are presented for purposes of additional analysis. The information in the schedules has been subjected to the auditing procedures applied in the audit of the financial statements and, in our opinion, is fairly stated in all material respects in relation to the financial statements taken as a whole.

*Schatz, Fletcher & Associates*

May 5, 1997  
Augusta, Maine

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

## STATEMENTS OF CASH AND FUND BALANCE

June 30, 1996 and 1995

	<u>1996</u>	<u>1995</u>
CASH BALANCE (Exhibit B) (Note 1)	<u>\$ 3,470,800</u>	<u>\$ 3,464,285</u>
FUND BALANCE	<u>\$ 3,470,800</u>	<u>\$ 3,464,285</u>

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

## STATEMENTS OF RECEIPTS AND DISBURSEMENTS AND CHANGES IN CASH BALANCE

For the years ended June 30, 1996 and 1995

	<u>1996</u>	<u>1995</u>
RECEIPTS		
Terminal and underground tank fees	\$ 16,029,670	\$ 14,218,054
Recoveries	12,091	65,847
Deductibles	88,200	48,697
Fines	1,850	12,010
Interest	210,844	366,205
Loan repayment	46,000	- 0 -
Miscellaneous	15,699	4,274
TOTAL RECEIPTS	<u>\$ 16,404,354</u>	<u>\$ 14,715,087</u>
DISBURSEMENTS (Schedule 1)	<u>16,397,839</u>	<u>20,352,290</u>
EXCESS (DEFICIENCY) OF RECEIPTS OVER DISBURSEMENTS	\$ 6,515	\$ (5,637,203)
CASH BALANCE, beginning of year	<u>3,464,285</u>	<u>9,101,488</u>
CASH BALANCE, end of year	<u><u>\$ 3,470,800</u></u>	<u><u>\$ 3,464,285</u></u>

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

NOTES TO FINANCIAL STATEMENTS

June 30, 1996 and 1995

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**NATURE OF ENTITY** - The Ground Water Oil Cleanup Fund is a special revenue fund of the State of Maine Department of Environmental Protection. These financial statements present the cash and fund balances and receipts and disbursements of this fund, only.

**NATURE OF ACTIVITIES** - The Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection was established by the Legislature of the State of Maine to be used by the Department as a nonlapsing, revolving fund for carrying out research and development devoted to the causes, effects and removal of pollution caused by oil on ground waters and relief to third parties for damages suffered as a result of discharge of oil to ground water.

**FUNDING** - Funding for the Ground Water Oil Cleanup Fund comes from fees assessed on gasoline and refined petroleum products. The fee is assessed on the first transfer of those products by oil terminal facility licensees, and others who first transport oil into the State of Maine.

The owners or operators of underground oil storage facilities that store motor fuel or, are used in the marketing and distribution of oil, are subject to an annual fee per tank.

**CASH** - Cash represents amounts allocated to the Ground Water Oil Cleanup Fund on deposit with the State Treasurer.

**ESTIMATES** - The preparation of financial statements in conformity with the cash basis of accounting requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**NOTE 2 - BASIS OF PRESENTATION**

The financial statements of the Ground Water Oil Cleanup Fund are presented on the cash basis of accounting which is another comprehensive basis of accounting other than generally accepted accounting principles.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

SCHEDULES OF DISBURSEMENTS

For the years ended June 30, 1996 and 1995

	<u>1996</u>	<u>1995</u>
DISBURSEMENTS		
Professional services	\$ 1,829,848	\$ 1,708,922
Cleanup	6,880,317	11,849,907
Professional fees	251,402	345,961
Travel	8,884	20,240
Auto expense	(2,087)	(398)
Utilities	61,994	66,351
Rents	92,729	164,452
Repairs	2,687	4,580
Insurance	455	3,097
General operating	40,209	77,132
Office supplies	16,768	14,064
Other supplies	51,028	93,968
Grants to public organizations	37,111	18,173
Workers compensation	- 0 -	196
STACAP	218,083	283,634
Capital cleanup	- 0 -	5,311
Capital other	26,095	186,505
Fee refunds	2,909,344	1,718,132
Transfers to overhead	1,600,889	756,519
Transfers to Fund Insurance Review Board	100,000	150,000
Transfers to Finance Authority of Maine	359,241	2,333,867
Transfers to board account	82,899	- 0 -
Transfers to Surface Fund	1,598,217	200,000
Transfers to State Fire Marshall	69,245	58,536
Transfers to Attorney General	162,481	109,141
Transfers to MEPF	- 0 -	184,000
TOTAL DISBURSEMENTS	<u>\$ 16,397,839</u>	<u>\$ 20,352,290</u>

Schatz  
Fletcher



Associates

CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL STRUCTURE  
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE  
WITH GOVERNMENT AUDITING STANDARDS

To the Fund Insurance Review Board  
Ground Water Oil Cleanup Fund  
State of Maine  
Department of Environmental Protection  
Augusta, Maine

We have audited the financial statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of and for the years ended June 30, 1996 and 1995, and have issued our report thereon dated May 5, 1997.

We conducted our audits in accordance with generally accepting auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. Those auditing standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

The management of the Ground Water Oil Cleanup Fund is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with the appropriate basis of accounting. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audits of the financial statements of the Ground Water Oil Cleanup Fund for the years ended June 30, 1996 and 1995, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide an opinion on the internal control structure. Accordingly we do not express such an opinion.

We noted certain matters involving the internal control structure and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control structure that, in our judgment, could adversely affect the fund's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. We have reported these matters in the accompanying memorandum of findings.

A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are considered to be material weaknesses as defined above. Matters involving the internal control structure and its operation that we consider to be material weaknesses are reported in the accompanying memorandum of findings. These conditions were considered in determining the nature, timing, and extent of the procedures performed in our audit of the financial statements of the Ground Water Cleanup Fund of the State of Maine Department of Environmental Protection.

This report is intended for the information of the Fund Insurance Review Board and the State of Maine Department of Environmental Protection. However, this report is a matter of public record, and its distribution is not limited.

*Schatz, Fletcher & Associates*

May 5, 1997  
Augusta, Maine



Schatz  
Fletcher

&

Associates

CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT AUDITORS' REPORT ON COMPLIANCE  
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE  
WITH GOVERNMENT AUDITING STANDARDS

To the Fund Insurance Review Board  
Ground Water Oil Cleanup Fund  
State of Maine  
Department of Environmental Protection  
Augusta, Maine

We have audited the financial statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of and for the years ended June 30, 1996 and 1995, and have issued our report thereon dated May 5, 1997.

We conducted our audits in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws and regulations applicable to the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection is the responsibility of the Fund's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of the Ground Water Oil Cleanup Fund's compliance with certain provisions of laws and regulations. However, the objective of our audits of the financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed instances of noncompliance that are required to be reported under Government Auditing Standards, which are reported in the accompanying memorandum of findings. We considered these instances of noncompliance in forming our opinion on whether the financial statements of the Ground Water Cleanup Fund of the State of Maine Department of Environmental Protection are presented fairly, in all material respects, in conformity with the cash basis of accounting.

This report is intended for the information of the Fund Insurance Review Board and the State of Maine Department of Environmental Protection. This report is a matter of public record, and its distribution is not limited.

*Schatz, Fletcher & Associates*

May 5, 1997  
Augusta, Maine

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding #1: NONCOMPLIANCE WITH STATUTORY LIMITS**

Title 38 MRSA Section 569-A Subsection 8a states:

*“Administrative expenses, personal expenses, and equipment costs of the Department related to the administration and enforcement of this subchapter and any loans to the Maine Coastal and Inland Surface Oil Cleanup Fund made prior to June 30, 1995 pursuant to this section. Except for disbursements for capital costs related to paragraph B or C, administrative expenses, personnel expenses and equipment costs may not exceed \$1,734,000 per fiscal year.”*

For the years ending June 30, 1996 and 1995, expenses for administrative and personnel costs and, for 1995, transfers to the Surface Fund, exceeded this limit. In 1997, the Department of Environmental Protection drafted an amendment to Section 569-A subsection 8 to clarify this limit. The proposed amendments, entitled “An Act to Amend Certain Laws Administered by the Department of Environmental Protection”, seeks to increase the limit from \$1,734,000 to \$2,000,000 per fiscal year. Further, It would allow repayment of loans from the Maine Coastal and Inland Surface Oil Cleanup Fund to be allowable in addition to, rather than as part of the \$2,000,000 limit.

**Recommendation:**

We recommend that the Department institute procedures to monitor its position with respect to administrative, personal and equipment expenditures to assure that they fall within the limits set by State statute. Further, we believe further clarification is needed as to legislative intent with regard to expenditures subject to the limit.

**Auditee Response:**

The auditor has misunderstood the amendment to MRSA 38, Section 569-A, subsection 8-A. The \$2,000,000 limit in the amendment applies to personnel costs only. Given current personnel costs, the limit appears appropriate.

Note should be taken that the overhead and STA CAP costs (Departmental and central state services support costs) are governed by federal and state laws and regulations which must be adhered to. Both these costs and equipment costs have been authorized by the legislature in each biennial budget and in each supplemental budget. The Department has acted in the manner consistent with its legislated authority.

The amendment removes the confusion of how to define administrative costs and removes the statutory and budgetary conflict.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding #2: INTERNAL CONTROL OVER SPILL COSTS**

Title 38 MRSA Section 569-A Subsection 10 states:

*"The Commissioner shall seek recovery for the use of the fund of all sums greater than \$1,000,000 per occurrence expended from the fund pursuant to subsection 8, paragraph j, for an applicant for coverage by the fund found by the Commissioner to be eligible ... in connection with a prohibited discharge, including interest computed at 15% a year from the date of the expenditure, unless the Commissioner finds the amount involved too small or the likelihood of success too uncertain"*

Accounting for costs by spill was not adequate to easily reconcile to the accounting records of the fund. For fiscal years 1996 and 1995, costs by spill number were tracked by employees at the program level, not by accounting department personnel. As a result, the spill costs per Department personnel does not reconcile, by spill, to the costs per the Service Center.

According to Department personnel, costs that were accounted for were probably incomplete because the system relied on employees voluntarily copying invoices for the spill file. If an invoice was not copied, it was not considered part of the cost of the spill. Thus, the mechanism in place was not adequate to provide complete information regarding eligible spills to allow the Commissioner to make informed decisions seeking recovery.

The spill costs are not kept in a database so any organizing of this information would have to be done manually.

**Recommendation:**

We recommend that the Department implement a system to accurately track all costs associated with a spill.

**Auditee Response:**

Beginning in the summer of 1996, the DEP implemented a new spill costing system called SSTS (Spill Site Tracking System) in order to track costs associated with a spill.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding #3 INTERNAL CONTROL OVER SPILL COSTS**

Title 38 MRSA Section 569-A Subsection 10 states:

*"The Commissioner shall seek recovery for the use of the fund of all sums greater than \$1,000,000 per occurrence expended from the fund pursuant to subsection 8, paragraph j, for an applicant for coverage by the fund found by the Commissioner to be eligible ... in connection with a prohibited discharge, including interest computed at 15% a year from the date of the expenditure, unless the Commissioner finds the amount involved too small or the likelihood of success too uncertain"*

Departmental salaries and overhead were not included in the spill costs under the old tracking system and there is no mechanism for tracking such costs using SSTS. The lack of an adequate mechanism for tracking Departmental salaries and overhead by spill could and probably has resulted in loss of recovery revenue to the State, since the Fund is required to seek recovery of expenditures in excess of \$1M per experience from the responsible party, when appropriate. Departmental overhead and salaries should be included as spill costs when determining whether to seek recovery.

**Recommendation:**

We recommend that employees working directly on a spill be required to code their time in such a manner that it can be included as part of the cost of the spill. This information needs to be integrated with the SSTS so that the true cost of a spill is captured.

**Auditee response:**

Most cases accepted for Fund coverage never exceed the \$1M base after which the Department may seek reimbursement for those costs in excess of \$1M. Because these cases are so few (no more than five), tracking of staff costs per spill event was intentionally not included in SSTS since the need for such a component is infrequent. However, the Department sees the value in capturing this information in SSTS, so that, for those cases in which we seek reimbursement, the information will be readily available.

An alternative to tracking actual staff costs through SSTS is to develop a flat rate and use this in lieu of actual staff costs. This flat rate would be based on an average cost of staff and would be applied to each spill event (again, only those in excess of \$1M).

The Department will investigate both the actual cost and flat rate scenarios and select the alternative which best meets its needs.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding #4: INEFFICIENCIES IN EXISTING SYSTEM**

We noted that, with the new system, invoice information was entered twice. Upon receipt of an invoice associated with an eligible spill, it was submitted to the spill's responding party for signature. Next, it went to the responding party's supervisor for approval. Then the invoice was sent to a clerk at the DEP to be entered into SSTS. Subsequently, the invoice was sent to the ACE service center to be reentered into the State's accounting software system.

**Recommendation:**

We recommend that the ACE service center and DEP work together to eliminate this duplication of effort.

**Auditee Response:**

The State of Maine automated accounting system (MFASIS) is not capable of providing the Department with the necessary financial, site-specific information; thus, SSTS was developed. While two separate systems may appear to be inefficient, they serve different purposes and, at this time, there exists no way in which these two can be merged to meet their independent functions. Additionally, MFASIS access is limited to relatively few state employees for very discreet purposes, while SSTS is available to virtually all staff in order to meet their needs and the needs of their customers.

**Finding #5: INTERNAL CONTROLS OVER DEDUCTIBLES**

Deductibles were not tracked in a manner that easily reconciled to the general ledger. They were tracked on a per spill basis and were not accumulated in total. It was difficult to readily find the detail of all deductibles received for a given time period and difficult to determine the amount of total deductibles due to the fund at any given time. This problem arises from the fact that DEP personnel assigned to a spill are tracking this information independent of the accounting function.

**Recommendation:**

Deductibles received and receivable need to be accounted for in a manner that easily reconciles to the general ledger.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding #5: INTERNAL CONTROLS OVER DEDUCTIBLES (Continued)**

**Auditee response:**

We agree with the recommendation and are developing an internal policy which will address the concerns of this finding.

**Finding #6: INTERNAL CONTROLS OVER DEDUCTIBLES**

We noted that once a spill was determined eligible, a deductible was calculated based on a formula set by statute. Most covered parties paid the deductible in cash. The deductible revenue was recorded upon receipt. However, some covered parties satisfied the deductible by paying invoices for work performed directly. The deductible revenue and associated expense were never recorded on the books of the fund. Accordingly, for such instances, total expenditures for the spills were understated.

**Recommendation:**

There should be a system in place to assure the proper recording of deductibles revenue and related spill expense.

**Auditee Response:**

We agree with the recommendation and are developing an internal policy which will address the concerns of this finding.

**Finding # 7 INTERNAL CONTROLS OVER TERMINAL FEES**

Terminal fee statistics were not maintained in such a way that they could be related to the terminal fee revenue. Barrel statistics were combined for the Ground Water and the Surface fund, hence, there was no easy way to relate revenue in dollars to the number of barrels of oil brought into the State. DEP staff required an extraordinary amount of time to compile the numbers for audit, which resulted in a much less efficient audit.

**Recommendation:**

We recommend that terminal fee statistics be separately maintained for each fund involved.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding # 7 INTERNAL CONTROLS OVER TERMINAL FEES (Continued)**

**Auditee response:**

Our terminal information database is in the process of being expanded to include all fields necessary to provide statistical information for daily use and future audits. This expansion will include a mechanism for differentiation of funds receiving terminal fees.

**Finding #8: INTERNAL CONTROLS OVER TERMINAL FEES**

There is currently no system in place to track fees receivable from the various terminals.

**Recommendation:**

There should be a system to track the amounts due from the terminals. Otherwise, there is no way to insure that the appropriate amount of fees are being received.

**Auditee response:**

Terminals report monthly on the product transferred in that month. The appropriate fee is included with the report. Reporting is based on the honor system in that terminals calculate the amount owed based on formulae provided on the reporting form and the calculations are checked after receipt of the form and the fee at the Department. As terminals are not able to predict transfers far in advance, it is not possible to establish a receivable system. In the past, Department staff have audited terminal records on a random basis and we intend to reinstate this practice through contracted services.

The Department has instituted a verification process to ensure that all required reports for a given month are received.

**Finding: #9: ADMINISTRATIVE CONTROLS**

We were engaged to audit the financial statements of the Ground Water Oil Cleanup Fund (the Fund) in accordance with generally accepted accounting principles. Due to difficulties encountered in accumulating accrual basis information for terminal fee receivables, deductibles, tank fees, etc., it was mutually agreed to present cash basis financial statements for 1996 and 1995.



Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS

For the years ended June 30, 1996 and 1995

**Finding: #9: ADMINISTRATIVE CONTROLS (Continued)**

**Recommendation:**

We recommend that the Fund Insurance Review Board communicate its reporting requirements for the Fund to Department officials well in advance should it desire accrual based statements in the future. Regardless of financial statement presentation, the Department should assign personnel to track and report on accrual based information.

**Auditee Response:**

At this time, MFASIS does not support accrual based accounting for other special revenue accounts. Had the independent auditor worked in partnership with the state auditor, he would have had a better understanding of and easier access to the State's accounting systems. He would have also gained an understanding of the limitation of accrual based accounting in state government. Regardless of the accounting system, the nature of some of the transactions do not lend themselves to accrual based accounting (see response to Finding #8).

**Finding #10: ADMINISTRATIVE CONTROLS**

Future audits of this and other funds would be much more efficient with some planning. There should be one individual responsible for coordinating the audit before, during and after the auditor completes the fieldwork. He should be sure that all major general ledger accounts have supporting schedules and can be traced back to source documents. This information should be assembled before the auditor begins fieldwork. The audit coordinator should be the person for the auditor to go to with questions, and he should determine the state employee responsible for solving a particular problem..

**Recommendation:**

For future audits, there should be one person at the DEP responsible for coordinating the audit.

**Auditee response:**

Here, too, had the auditor made better use of the previously-mentioned audit coordinators, perhaps some time could have been saved and some confusion could have been prevented.

For future audits, the contact position will be the Director of Program Services within the Bureau of Remediation and Waste Management. The Director of Program Services will coordinate with the Director of Management Services.

**EXHIBIT B**

**Audit of Fund for fiscal year ending June 30, 1997.**

Ground Water Oil Cleanup Fund  
FINANCIAL STATEMENTS  
For the years ended June 30, 1997 and 1996

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Schatz  
Fletcher



Associates

CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT AUDITORS' REPORT

To the Fund Insurance Review Board  
Ground Water Oil Cleanup Fund  
State of Maine  
Department of Environmental Protection  
Augusta, Maine

We have audited the accompanying financials statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of and for the years ended June 30, 1997 and 1996, as listed in the table of contents. These financial statements are the responsibility of the fund's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards and *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 1, the financial statements present only the activity of the Ground Water Oil Cleanup Fund and are not intended to present fairly the results of operations of the State of Maine Department of Environmental Protection in conformity with the basis of accounting more fully described in Note 2.

As described in Note 2, these financial statements were prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the financial statements referred to above present fairly, in all material respects, the cash and fund balances of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of June 30, 1997 and 1996, and the receipts and disbursements for the years then ended on the basis of accounting described in Note 1.

In accordance with *Government Auditing Standards*, we have also issued a report dated November 7, 1997 on our consideration of the Ground Water Oil Cleanup Fund's internal control over financial reporting and our tests of its compliance with certain provisions of laws and regulations.

Our audit was made for the purpose of forming an opinion on the financial statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection taken as a whole. The accompanying schedules of disbursements are presented for purposes of additional analysis. The information in the schedules has been subjected to the auditing procedures applied in the audit of the financial statements and, in our opinion, is fairly stated in all material respects in relation to the financial statements taken as a whole.

*Schatz Fletcher and Associates*  
November 7, 1997  
Augusta, Maine

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

## STATEMENTS OF CASH AND FUND BALANCE

June 30, 1997 and 1996

	<u>1997</u>	<u>1996</u>
CASH BALANCE (Exhibit B) (Note 1)	<u>\$ 4,233,899</u>	<u>\$ 3,470,800</u>
FUND BALANCE	<u>\$ 4,233,899</u>	<u>\$ 3,470,800</u>

See accompanying notes

Schatz, Fletcher &amp; Associates

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

STATEMENTS OF RECEIPTS AND DISBURSEMENTS AND CHANGES IN CASH BALANCE

For the years ended June 30, 1997 and 1996

	<u>1997</u>	<u>1996</u>
RECEIPTS		
Terminal and underground tank fees	\$ 17,047,991	\$ 16,029,670
Recoveries	382,287	12,091
Deductibles	86,947	88,200
Fines	84,487	1,850
Interest	235,613	210,844
Loan repayment	46,000	46,000
Miscellaneous	7,374	15,699
TOTAL RECEIPTS	<u>\$ 17,890,699</u>	<u>\$ 16,404,354</u>
DISBURSEMENTS (Schedule 1)	<u>17,127,600</u>	<u>16,397,839</u>
EXCESS OF RECEIPTS OVER DISBURSEMENTS	\$ 763,099	\$ 6,515
CASH BALANCE, beginning of year	<u>3,470,800</u>	<u>3,464,285</u>
CASH BALANCE, end of year	<u><u>\$ 4,233,899</u></u>	<u><u>\$ 3,470,800</u></u>

See accompanying notes

Schatz, Fletcher & Associates

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

NOTES TO FINANCIAL STATEMENTS

June 30, 1997 and 1996

NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**NATURE OF ENTITY** - The Ground Water Oil Cleanup Fund is a special revenue fund of the State of Maine Department of Environmental Protection. These financial statements present the cash and fund balances and receipts and disbursements of this fund, only.

**NATURE OF ACTIVITIES** - The Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection was established by the Legislature of the State of Maine to be used by the Department as a nonlapsing, revolving fund for carrying out research and development devoted to the causes, effects and removal of pollution caused by oil on ground waters and relief to third parties for damages suffered as a result of discharge of oil to ground water.

**FUNDING** - Funding for the Ground Water Oil Cleanup Fund comes from fees assessed on gasoline and refined petroleum products. The fee is assessed on the first transfer of those products by oil terminal facility licensees, and others who first transport oil, by road or rail, into the State of Maine.

The owners or operators of underground oil storage facilities that store motor fuel or, are involved in the marketing and distribution of oil, are subject to an annual fee per tank.

**CASH** - Cash represents amounts allocated to the Ground Water Oil Cleanup Fund on deposit with the State Treasurer.

**ESTIMATES** - The preparation of financial statements in conformity with the cash basis of accounting requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**NOTE 2** - BASIS OF PRESENTATION

The financial statements of the Ground Water Oil Cleanup Fund are presented on the cash basis of accounting which is another comprehensive basis of accounting other than generally accepted accounting principles.



Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

SCHEDULES OF DISBURSEMENTS

For the years ended June 30, 1997 and 1996

	<u>1997</u>	<u>1996</u>
DISBURSEMENTS		
Personal services	\$ 1,906,585	\$ 1,829,848
Cleanup	6,510,801	6,880,317
Professional fees	341,104	251,402
Travel	15,355	8,884
Auto expense	(2,563)	(2,087)
Utilities	64,280	61,994
Rents	161,202	92,729
Repairs	2,668	2,687
Insurance	365	455
General operating	51,623	40,209
Office supplies	6,677	16,768
Other supplies	58,814	51,028
Grants to public organizations	28,267	37,111
STACAP	108,576	218,083
Capital other	22,766	26,095
Fee refunds	3,922,026	2,909,344
Transfers to overhead	1,284,087	1,600,889
Transfers to Fund Insurance Review Board	100,000	100,000
Transfers to Finance Authority of Maine	2,153,571	359,241
Transfers to board account	99,662	82,899
Transfers to Surface Fund	134,161	1,598,217
Transfers to State Fire Marshall	- 0 -	69,245
Transfers to Attorney General	157,573	162,481
	<hr/>	<hr/>
TOTAL DISBURSEMENTS	<u>\$ 17,127,600</u>	<u>\$ 16,397,839</u>

See accompanying notes

Schatz, Fletcher & Associates



REPORT ON COMPLIANCE AND ON INTERNAL CONTROL OVER FINANCIAL REPORTING BASED  
ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH  
*GOVERNMENT AUDITING STANDARDS*

To the Fund Insurance Review Board  
Ground Water Oil Cleanup Fund  
State of Maine  
Department of Environmental Protection  
Augusta, Maine

We have audited the financial statements of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of and for the years ended June 30, 1997 and 1996, and have issued our report thereon dated November 7, 1997. We conducted our audits in accordance with generally accepting auditing standards and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

**Compliance**

As part of obtaining reasonable assurance about whether the financial statements of the Ground Water Oil Cleanup Fund are free of material misstatement, we performed tests of its compliance with certain provisions of laws and regulations, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed instances of noncompliance that are required to be reported under *Government Auditing Standards* which are described in the accompanying memorandum of findings and observations.

**Internal Control Over Financial Reporting**

In planning and performing our audits, we considered the fund's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on the internal control over financial reporting. However, we noted certain matters involving the internal control over financial reporting and its operation that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control over financial reporting that, in our judgment, could adversely affect the fund's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. We have reported these matters in the accompanying memorandum of findings and observations.

A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of the internal control over financial reporting would not necessarily disclose all matters in the internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are considered to be material weaknesses. However, we believe

none of the reportable conditions described in the accompanying memorandum of findings and observations is a material weakness.

This report is intended for the information of the Fund Insurance Review Board and the State of Maine Department of Environmental Protection. However, this report is a matter of public record, and its distribution is not limited.

*Schatz Fletcher and Associates*

November 7, 1997

Augusta, Maine

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS AND OBSERVATIONS

For the year ended June 30, 1997

**Finding #1: COMPLIANCE WITH STATUTORY LIMITS**

Title 38 MRSA Section 569-A Subsection 8 states:

***"Money in the Ground Water Oil Clean-up Fund must be disbursed for the following purposes and no others:***

***A. Administrative expenses, personal services, and equipment costs of the Department related to the administration and enforcement of this subchapter, except that total disbursements for personal services may not exceed \$2,000,000 per fiscal year..."***

During the fiscal year ended June 30, 1997, the Department incurred temporary services costs in the amount of \$159,491. The temporary services provided related to functions that would have otherwise been performed by employees of the Department and included in personal services, subject to the foregoing statute. If the costs associated with temporary services were added to personal services, Department personal services would exceed the \$2,000,000 cap.

**Recommendation:**

We recommend that the Department institute procedures to better define costs subject to the personal services cap, and to monitor its position with respect to personal services expenditures to assure that they fall within the limits set by State statute.

**Auditee Response:**

We disagree that temporary services costs be included in the \$2,000,000 limit on personal services. Personal services, in the context of the statutory reference, is an expense category for Department staff paid through the Ground Water Oil Cleanup Fund. The Department use of temporary employment services has been limited to field technicians who perform discreet functions which qualify for consideration as All Other expenses.

The issue regarding State use of temporary employment services and the potential employer/employee relationship is under scrutiny throughout State government. More restrictions will be imposed on future temporary services contracts and it is likely that our requests will be denied. As a result of this, the Department will need to reexamine its resource needs and an increase above the \$2,000,000 limit may be required in order to continue service at the present level.

**Finding #2: INTERNAL CONTROL OVER SPILL COSTS**

Title 38 MRSA Section 569-A Subsection 10 states:

***"The Commissioner shall seek recovery for the use of the fund of all sums greater than \$1,000,000 per occurrence expended from the fund pursuant to subsection 8, paragraph j, for an applicant for coverage by the fund found by the Commissioner to be eligible ... in connection with a prohibited discharge, including interest computed at 15% a year from the date of the expenditure, unless the Commissioner finds the amount involved too small or the likelihood of success too uncertain".***

Departmental salaries and overhead are not included in spill costs and there is no mechanism for tracking such costs using SSTS. The lack of an adequate mechanism for tracking Departmental salaries and overhead by spill could and probably has resulted in loss of recovery revenue to the State, since the Fund is required to seek recovery of

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS AND OBSERVATIONS

For the year ended June 30, 1997

**Finding #2: INTERNAL CONTROL OVER SPILL COSTS (Continued)**

expenditures in excess of \$1M per spill event from the responsible party, when appropriate. Departmental overhead and salaries should be included in spill costs when determining whether to seek recovery.

**Recommendation:**

We recommend that employees working directly on a spill be required to code their time in such a manner that it can be included as part of the cost of the spill. Additionally, overhead should be applied to spill costs. This information should be integrated with the SSTS so that the true cost of a spill will be captured.

**Auditee response:**

Most cases accepted for Fund coverage neither approach nor exceed \$1M in expenditures after which the Department may seek reimbursement for those costs in excess of \$1M. Often such cases are complex and may involve litigation and other difficulties which make reimbursement collection difficult. Because these cases are so few, tracking of staff costs per spill event was intentionally not included in SSTS. However, the Department sees the value in capturing this information.

The Department and other agencies have been working with the state Bureau of Accounts and Control to provide for a statewide automated payroll system that also incorporates cost accounting at several levels. The system bid, design, development, and deployment are expected to be completed by January of 2000. It appears to be cost prohibitive for the Department to develop its own system.

**Finding #3: BUDGETED TRANSFERS TO STATE FIRE MARSHAL**

Budgeted transfers to the State Fire Marshall were not made in fiscal year 1997 due to lack of sufficient monitoring.

**Recommendation:**

We recommend that the required transfer be made in fiscal year 1998. A proper monitoring system should be developed to prevent these oversights in the future.

**Auditee response:**

The FY97 transfer to the State Fire Marshall's Office (SFMO) has been made. The memo requesting transfer (dated March 1997) was never received. A photocopy of the March memo was received in October and processed for payment immediately.

In order to avoid this in the future, the SFMO will be asked to request each transfer through the State of Maine internal billing system. This should effectively guarantee receipt at the Department. Additionally, should payment not be made within 30 days, a subsequent bill will automatically be sent by the SFMO.

**Finding #4: CONTROL OVER TERMINALS AND TANK FEES**

Under the current system, terminals submit monthly reports based upon an honor system. In some cases, terminal reports are submitted late or not at all.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS AND OBSERVATIONS

For the year ended June 30, 1997

**Finding #4: CONTROL OVER TERMINALS AND TANK FEES\_(Continued)**

**Recommendation:**

We recommend that the Department institute occasional audits of the terminals and confirm that the data on the reports matches the terminal's financial data. We also recommend that a penalty system be developed for late filers or for failure to file.

**Auditee Response:**

Terminals are required to submit reports on a monthly basis, regardless of whether or not petroleum products were transferred in that month. Department staff does monitor receipt of these reports and notifies terminals which have failed to submit.

"Spot auditing", which the Department suggested after the FY95 and FY96 audit will be instituted once a protocol has been established this winter. It is likely that contracted services will be necessary to carry out this task.

The Department enforcement authority will be examined to determine what action can be taken against delinquent filers under existing authority. Expanded authority will be pursued if warranted.

**Finding #5: PROPER CODING OF INSURANCE DEDUCTIBLES**

Frequently a responsible party for a spill pays the deductible owed to the Ground Water Oil Cleanup Fund by paying for clean-up costs directly. Excess prepaid clean-up costs are reimbursed to the insured responsible party. On the State-wide accounting system, the reimbursed clean-up costs less the deductible are coded into expenses as net clean-up costs without any recording of the deductible met. This process causes the clean-up costs and the revenue for deductible accounts to be understated.

**Recommendation:**

We recommend that the total of all reimbursed invoices be posted to clean-up expense with a credit posted to the deductible revenue account.

**Auditee Response:**

MFASIS, the state accounting system, does not allow for recording clean-up costs as a net amount. "Met" deductibles cannot be recorded as revenue without an actual cash receipt. In order to better track deductibles "met" through reduced invoice reimbursement, we are enhancing SSTS to allow for this recording.

**Finding #6: IMPROPER CODING OF SURFACE FUND REVENUE**

A June '97 entry was improperly coded to Surface Fund Revenue.

**Recommendation:**

We recommend that a journal entry in the amount of \$246,133.80 be made to reclass Surface Fund Revenue to Ground Water Oil Cleanup Fund revenue in the next fiscal year.

Ground Water Oil Cleanup Fund  
of the State of Maine Department of Environmental Protection

MEMORANDUM OF FINDINGS AND OBSERVATIONS

For the year ended June 30, 1997

**Finding #6: IMPROPER CODING OF SURFACE FUND REVENUE (Continued)**

**Auditee Response:**

This coding error has been corrected. Additional monitoring of coding will minimize the likelihood of a reoccurrence.

**Finding #7: CROSS TRAINING EMPLOYEES**

The terminal fee system and the SSTS system both have only one employee trained to operate the respective systems. If either one of these employees was unable to come to work for an extended period, the systems are at risk for failure.

**Recommendation:**

We recommend that cross training take place for the terminal fee system and the SSTS system.

**Auditee Response:**

Minimal staff resources and a burdensome workload have precluded the ability to allow for adequate coverage should it be needed. Through contracted services the Department has been able to secure coverage for the operation and maintenance of SSTS. Additionally, the Department is in the process of establishing another position in the financial management section. In addition to performing other duties, this position will serve as backup for the terminal fee system.

**Finding #8: MONITORING SPILL REVENUES**

Reimbursements for spills are not closely monitored. There is currently no system in place to notify the Director when a spill has exceeded \$1 million in costs. Collections are not initiated on non-insured parties until after the spill has been cleaned. The current SSTS system does not have a data field to notify the user when a responsible party may be eligible for Inability to Pay assistance.

**Recommendation:**

A system should be established to better monitor total spill costs, collections, and other statistics needed by management to make responsible decisions regarding Ground Water Oil Cleanup Funds. An update to the computer system would provide greater sorting ability for reports.

**Auditee Response:**

The responsibility for monitoring individual spill costs rests with the project manager, who, in turn, appraises the program manager of individual cases. Additionally, the Fund manager has instituted the practice of a comprehensive monthly review of spill cases and costs. This information is shared with the Bureau Director and various program managers. The in-progress enhancement to SSTS will allow for better monitoring and reporting.

The Individual Ability to Pay Program reference has been placed in the NOTES section of each spill case within SSTS. Under the enhancement of SSTS, the Individual Ability to Pay Program will have its own table and will be indexed so that users can access the information if they wish to do so.

**EXHIBIT C**

**Chapter 2 (Substantial Compliance Criteria)**



90-564

FUND INSURANCE REVIEW BOARD

Chapter 2 Substantial Compliance Criteria

Basis Statement for Repeal of Rule: The substantial compliance requirements set forth in 38 M.R.S.A. § 568-A(1) as enacted by P.L. 1993, ch. 363, §§ 8 and 9, were repealed by P.L. 1995, ch. 361, § 4 (effective September 29, 1995), and therefore the rule is no longer necessary.

**EXHIBIT D**

**Chapter 5 (Documentation Requirements or Applications to the State**

**Fire Marshal for Coverage by the Fund)**

90--564

## FUND INSURANCE REVIEW BOARD

Chapter 5 Documentation Requirements for Applications to the State Fire Marshal for Coverage by the Ground Water Oil Clean-Up Fund at Above Ground Oil Storage Facilities

Summary: This chapter lists the documents required to be supplied by owners/ operators of above ground oil storage facilities as part of the application to the State Fire Marshal for coverage by the Ground Water Oil Clean-Up Fund.

### 1. Documents Required

The documents required to be submitted to the State Fire Marshal by an applicant as part of an application for coverage by the Ground Water Oil Clean-Up Fund are as follows:

- A. A completed application form as issued by the Office of the State Fire Marshal.
- B. The spill prevention control and countermeasure plan applicable to the facility, if the facility is required to have such a plan. If a plan is submitted, indicate when the plan was certified by a certified Maine engineer or other qualified professional and the date when the plan was last updated.
- C. Documentation to support the amount of money spent on clean-up for which coverage from the Fund is requested.
- D. The State Fire Marshal may also ask for additional documents. The applicant is required to comply with the request as long as it is reasonable, or explain why it is not possible to do so.

### 2. Other Documents Relied Upon

When making a determination on the application, the State Fire Marshal may also rely on documents contained in the files of the Office of the State Fire Marshal and the Department of Environmental Protection.

### 3. Other Documents May be Submitted

The applicant is encouraged to supply other documents, including pictures, which the applicant believes would assist the State Fire Marshal in making a determination on the application.

Statutory Authority: 38 M.R.S.A. § 568-A(1)(H)

Effective Date:

Basis Statement: This chapter is intended to provide information to applicants for coverage by the Ground Water Oil Clean-Up Fund of the documentation required by the Office of the State Fire Marshal in support of the application.

Comments and Responses:

**Standard Operating Procedures****Abuse/Grievance/Fund Insurance Claims****Department of Public Safety  
Licensing & Inspection Div  
State Fire Marshal's Office  
Augusta, Maine 04002-01**

*To Whom it may concern:*

This letter is to advise you of the procedures this office will be conducting to review your claim. The set of additional deductibles for failure to comply with installation, maintenance or operation standards has been enacted into Maine Law, and we will be basing our decisions on those issues.

Our procedure will be as follows:

- 1) An application form will be sent to the applicant.
- 2) Upon information received back from the applicant, a case file form will be initiated by this office. If more information is required to complete the form, then a site visit may be necessary.
- 3) Any files on hand at the State Fire Marshal's Office or at the Department of Environmental Protection that pertain to the applicant, will be reviewed to assist in the decision making process.
- 4) A meeting will be set up with the applicant if additional information is necessary to arrive at our decision.
- 5) If a determination has been made to deny coverage or impose additional deductibles, the applicant will be notified. An applicant aggrieved by the decision of the State Fire Marshal's Office may appeal that decision to the Fund Insurance Review Board.

If we may be of further assistance to you in this matter, please do not hesitate to contact this office at 207-624-8744.

**Location:**  
397 Water Street  
Gardiner, Maine  
Tel: 207-624-8744  
Fax: 207-624-8767



Angus S. King, Jr.  
Governor

# Department of Public Safety

Licensing and Inspections Unit

State Fire Marshal's Office  
Engineering and Inspections Divisions  
164 State House Station  
Augusta, Maine 04333-0164



Ladd G. Alcott  
Fire Marshal

## ABOVE-GROUND STORAGE TANK INSURANCE FUND APPLICATION

Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City/Town: \_\_\_\_\_

City/Town spill occurred: \_\_\_\_\_

Tank Size: \_\_\_\_\_

Directions and location of the tank on the property: \_\_\_\_\_

How many facilities are owned by this company? \_\_\_\_\_

*By signing this document, the applicant certifies that he/she is the owner/operator of the facility, that the information contained in this application is accurate, agrees to pay the deductible amount, and to permit access to all properties and buildings under the control of the applicant for the purpose of conducting inspections and reviewing records. Falsification of this document shall constitute grounds for denial. The applicant further understands that pursuant to 38 M.R.S.A., Section 349.3 and or 17A M.R.S.A., Section 453, falsification of information contained in this document maybe punishable by fines, imprisonment, or both.*

Applicant's Signature \_\_\_\_\_ Date \_\_\_\_\_

**DO NOT WRITE BELOW THIS LINE - FOR OFFICE USE ONLY**

APPROVED

DENIED

DEDUCTIBLE AMOUNT: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

397 Water Street  
Gardiner, Maine 04345  
Telephone: 207-624-8744  
Fax: 207-624-8767

## ABOVE-GROUND STORAGE TANK INSURANCE FUND APPLICATION

Please provide information on the following statements to the best of your ability. Please submit pictures and other information to assist in the decision making process. If more space is required to complete the questions below, please use a separate sheet of paper.

1. Please cite the Maine State Fire Marshal Permit Number and Date Issued for the facility.
2. If there is any underground piping at the facility, please describe how the piping was installed in conformance with DEP regulations, Chapter 691, or 38 M.R.S.A. 570-K.
3. Do you have an existing consent decree, court order, or outstanding deficiency statement regarding violations at your above-ground facility? (If so, please describe).
4. Please describe the materials of construction of your aboveground tank(s) and how you believe the tank(s) is approved for aboveground use.
5. Please describe the spill and how the spill occurred.
6. Please state the date the spill occurred.
7. Please state the type of product that was spilled.

8. Please tell us how much product was discharged (estimate if necessary).
9. Please inform us of what clean-up actions were taken.
10. Have there been any previous discharges or spills at this location before?
11. Please detail the spill control and containment measures in effect at the facility (i.e., dikes, etc.)
12. Is there overfill equipment installed and in proper working order at the facility? (If so, describe. If not, please explain).
13. Does your facility have a Spill Prevention Control and Countermeasure Plan (SPCC), if required. (If not, please explain). If so, please enclose with your application and be sure that the plan has been signed by a certified Maine engineer or other qualified professional, including the date of last update.
14. Please describe the amount you are seeking coverage for the spill/discharge you are applying for, and what documentation you are enclosing with this application or will provide to attest to this amount.
15. Please cite the date you informed the Maine Department of Environmental Protection of the discharge and the individual who responded.



**EXHIBIT E**

**Chapter 6 (Assessment of Ability to Pay).**

90-564

## FUND INSURANCE REVIEW BOARD

## Chapter 6 Assessment of Inability to Pay Deductible

Summary: This chapter provides the factors and guidelines that shall be used to determine whether an applicant for coverage to the Ground Water Oil Clean-Up Fund for a personal residence is unable to pay the deductible and therefore whether the assignment of the deductible should be waived.

## 1. Initial Determination

The Commissioner of the Department of Environmental Protection shall make the initial determination as to whether all or part of the deductibles applicable to an applicant for coverage by the Ground Water Oil Clean-Up Fund for a personal residence shall be waived based upon the applicant's inability to pay. If the decision by the Commissioner is adverse to the applicant, the applicant may appeal the Commissioner's decision to the Appeals Panel pursuant to 38 M.R.S.A. § 568-A(3-A) and Chapter 3.

## 2. Documents to be Supplied

Applicants who request that a deductible be waived must supply a completed claim form as issued by the Department of Environmental Protection and federal income tax returns filed for the three years preceding the year of the request. The applicant must also complete a Financial Data Request Form issued by the Department and supply documents to support the information provided in the form if asked to do so by the Department.

## 3. Factors Used in Assessing Applicant's Ability to Pay

Using information supplied by the applicant and verified by the Department, the Commissioner shall determine the applicant's ability to pay the deductible by examining the following factors:

A. **Total income:** The applicant's total income, as opposed to the applicant's total *taxable* income, and the nature of that income. The applicant's total income will be determined to fall into one of the following categories which will be referred to throughout this Chapter:

1. Category A if the income is less than 75% of median household income;
2. Category B if the income is 75% to 125% of median household income; and

3 . Category C if the income is greater than 120% of median household income.

"Median household income" is the amount set forth in the most recent Farmers Home Administration Income Tables, which are supplied on a county-by-county basis and take account of household size.

**B. Cash flow:** The applicant's cash flow during the past year will be determined to evaluate any excess money the applicant may have available after paying all other living expenses. Cash flow is determined by subtracting all expenditures from all revenues.

The expenses deducted when calculating the applicant's cash flow may be increased by the Commissioner by the application of a contingency allowance, to take account of emergencies or unidentified needs. For example a contingency allowance of 5% would increase the applicant's expenses by 5% when calculating the applicant's cash flow. A contingency allowance of 15% may be applied to applicant's in Category A, of 10% to applicants in Category B, and of 5% to applicant's in Category C. The Commissioner may decide not to assign a contingency allowance if he determines that the expenses listed by the applicant are not reasonable or are inflated.

**C. Net worth:** The applicant's net worth shall be determined by subtracting liabilities from assets to determine if the applicant has any available assets which could be sold to pay the deductible.

**D. Debt capacity:** A determination of the applicant's ability to pay the deductible through the assumption of debt shall be determined by calculating the applicant's debt capacity which is the ratio of liabilities to assets. An applicant is determined to have debt capacity if the liability to asset ratio is as follows:

1. Category A: The ratio must be less than .50 if the applicant is retired, nearing retirement or unemployed, and less than .60 if the applicant is employed.

2. Category B: The ratio must be less than .55 if the applicant is retired, nearing retirement or unemployed, and less than .70 if the applicant is employed.

3. Category C: The ratio must be less than .60 if the applicant is retired, nearing retirement or unemployed, and less than .80 if the applicant is employed.

In addition, a determination will be made as to whether all of the applicant's debt payments exceed 36% of the applicant's total income as it is doubtful that applicants directing more than 36% of gross income to debt payments would have significant liability assuming more debt.

E. **Extenuating circumstances:** Any extenuating circumstances, such as age, health, employment status, or anticipated expenses may be considered by the Commissioner.

#### 4. Evaluation Process

A. If an initial evaluation of an applicant's total income determines that the applicant's total income is less than the "minimum income standard", the applicant will be determined to be unable to pay the deductible. The "minimum income standard" is the "low" income level set forth in the most recent Farmers Home Administration Income Table which is applicable to the applicant based upon county of residence and size of household.

B. If the initial evaluation referred to in Section A shows that the applicant is able to pay the deductible, a further evaluation will be undertaken in line with the following guidelines:

1. Outcome 1: If the applicant has available cash flow and available assets, the applicant should be able to afford to pay the deductible. If however, the applicant's debt payment ratio is greater than 36% then the applicant may have difficulty reimbursing the state through additional debt.

2. Outcome 2: If the applicant has insufficient cash flow but available assets, the applicant may be able to pay the deductible through the sale of assets, but not out of annual income or additional debt.

3. Outcome 3: If the applicant has available cash flow but does not have available assets, the applicant should be able to pay the deductible through annual income, but not by sale of assets or assumption of debt.

4. Outcome 4: If the applicant has insufficient cash flow and does not have available assets, the applicant may be unable to pay the deductible.

The Commissioner shall also examine any extenuating circumstances when weighing the applicant's financial position against the possible outcomes listed above.

#### 5. Use of Financial Analyst

The Commissioner may consult a financial analyst of his choosing if he deems it necessary in order to fully evaluate an applicant's ability to pay a deductible.

Statutory Authority: 38 M.R.S.A. § 568-A(3)

Effective Date:

Basis Statement: This chapter is intended to provide a general outline of the basic principles to be used to assess an applicant's ability to pay a deductible for the applicant's personal residence. The rule is derived from the process which is currently used by the Commissioner of the Department which in turn is based upon the Individual Ability to Pay Guidance for the U. S. EPA Region VII. The chapter is intended to provide guidelines to the Commissioner but to provide some latitude to consider factors on a case-by case basis.

Comments and Responses:

INDIVIDUAL  
ABILITY TO PAY  
GUIDANCE

Prepared for:

Maine Department of Environmental Protection  
Division of Oil and Hazardous Waste Facilities Regulation  
State House Station 17  
Augusta, Maine 04333

Prepared by:

Industrial Economics, Incorporated  
2067 Massachusetts Avenue  
Cambridge, Massachusetts 02140

April 1993

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- Appendix A: FMHA ADJUSTED INCOME LIMITS
- Appendix B: GUIDELINES ON USAGE OF INDIVIDUAL FEDERAL INCOME TAX RETURNS 1040EZ, 1040A, 1040
- Appendix C: INDIVIDUAL ABILITY TO PAY ANALYSIS - WORKSHEETS
- Appendix D: INDIVIDUAL ABILITY TO PAY ANALYSIS - DATA FORMS
- Appendix E: CONSUMER PRICE INDEX MEASURES OF THE RELATIVE IMPORTANCE OF HOUSEHOLD EXPENDITURES

## BACKGROUND

Under the State of Maine's reimbursement program, the Maine Department of Environmental Protection (DEP) must seek reimbursement from responsible parties for the cost of remediating or preventing hazardous discharges to land, surface water or ground water. DEP may waive all or a portion of the reimbursement amount, however, if the amount involved is too small or the likelihood of success is too uncertain (i.e., the responsible party does not have sufficient resources to reimburse the state). Further, in many of the cases where uncertainty regarding repayment is an issue, the responsible party is an individual or a small family-owned business.

The purpose of this document is to provide DEP with a method for evaluating an individual's ability to reimburse DEP under this statute.<sup>1</sup> Our goals in developing this guidance were that the approach:

- Be grounded in sound financial analysis techniques and theory;
- Be simple to administer;
- Employ DEP staff time efficiently;
- Offer flexibility in terms of the ability to pay criteria;
- Minimize data production burdens on claimants, and the need for assistance from accountants or lawyers; and
- Produce clear, concise evaluations.

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<sup>1</sup> This document is based on the Individual Ability to Pay Guidance for U.S. EPA Region VII and the Iowa Department of Natural Resources, developed by Industrial Economics to determine an individual's ability to pay for site assessment or remediation of UST releases.

The ability to pay analysis consists of two stages. Phase I screens from further assessment those individuals who are clearly unable to pay. This analysis is based on the individual's most recent tax return. Phase II is a detailed analysis of those individuals who are not eliminated by the Phase I screen, and evaluates three financial characteristics: (1) total income, (2) cash flow, and (3) net worth. The Phase II analysis is based on the individual's most recent tax return and additional data supplied by the applicant on a Financial Data Request form.

In addition to this document, a computerized version of these forms has also been developed that automates many of the hand calculations described in this document. For information on how to access the computerized system, contact Felicia Hillman at (207) 287-2651.

## DEFINING "ABILITY TO PAY"

Although this manual is designed to provide users with a methodology for calculating an individual's financial capability, there are a variety of measures of "ability to pay." The strictest definition is known as "solvency." An individual is insolvent when his or her liabilities exceed his or her assets. In this situation, the individual could declare bankruptcy and have the court assist in the disposition of the liabilities. Even if individuals are solvent, however, they may have a limited ability to reimburse DEP for site costs. For example, an applicant may have a total annual income at poverty levels, minimal assets and no liabilities. In this case, assets are greater than liabilities, but the applicant has minimal income, and on that basis must be judged unable to pay. In addition, an individual's ability to pay for site investigation or remediation depends on the financial burden DEP chooses to place on individuals. For example, we suggest that DEP incorporate factors such as age and the number of dependents when determining ability to pay.

## ORGANIZATION OF THIS MANUAL

Chapter 2 of this manual outlines the ability to pay evaluation process, from information collection through final assessment, and discusses the methodology and criteria in detail. Chapters 3, 4 and 5 review the Phase I and Phase II analyses for individuals filing a 1040EZ, 1040A and 1040 federal income tax return, respectively. Chapter 6 discusses how to use and evaluate the analyses. Appendix A contains the FmHA Income Tables that we use to make income comparisons. In Appendix B we provide information about the 1040EZ, 1040A and 1040 federal income tax returns. Appendix C contains blank worksheets. Appendix D contains blank data forms that can be photocopied for use with cases. Appendix E contains Consumer Price Index Guidelines on the relative importance of household expenditures.

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## GOALS

The goal of this guidance is to provide a consistent and theoretically sound method for evaluating ability to pay in cases involving individuals and sole proprietorships. In particular, we want to set up an analytic framework that provides a clear and concise record of each individual's case, and produces results that can be used to make fund reimbursement decisions at DEP-targeted sites throughout the state.

The process presented in this manual applies financial analysis techniques commonly used to evaluate an individual's financial position. Using basic financial information, worksheets, and a set of criteria we have developed, DEP staff can quickly assess an individual's financial condition. While the basic analytical framework is uniform for all applicants, the analysis is flexible in terms of the ability to pay criteria. For example, DEP has the opportunity to balance the ability to pay estimate against other factors that the applicant chooses to provide information on (e.g., health, anticipated expenditures, etc).

Another goal in creating this framework is that it be simple to administer and employ DEP staff time efficiently. The worksheets used in the analysis will help staff to quickly and easily calculate an applicant's cash flow and available assets. Computations and the use of financial ratios are kept to a minimum. In a similar fashion, we attempt to minimize the data production burdens placed on applicants. The Financial Data Request Forms are simple and straightforward, such that most applicants should be able to complete them without assistance from an accountant or lawyer. In addition, because of the Phase I screening process, fewer applicants will be required to go through this step.

We want to note that this analytical method will not produce a final ability to pay assessment in all cases. Our objective is to provide assistance on the vast majority of cases, particularly for those applicants with a straightforward financial situation. Cases involving applicants with sophisticated investments (e.g., trusts, partnerships, Subchapter S corporations) may require evaluation by a financial analyst.

## APPROACH AND METHODOLOGY

We developed this guidance using standard financial principles and analytical techniques. Our method is similar in some respects to the process that banks and other financial institutions use to make loan determinations. Using information supplied by the applicant, we first assess an individual's cash flow. Cash flow is measured for a time period, such as a month or year, by subtracting all expenditures from revenues (e.g. salary, interest, dividends, Social Security) received.<sup>2</sup> Next we assess net worth, that is, the value of all assets after deducting liabilities or debt. We then compare an applicant's cash flow and net worth to standards or ratios based on that individual's income level, age, county of residence, and household size. The degree to which an applicant's cash flow and net worth are above or below a specified ratio determines their ability to pay.

We designed this guidance process to accommodate both 1991 and 1992 financial data. Note, however, this process may be used to analyze data from other years if variations such as tax form formatting and FmHA data limit updates are accounted for.

### Phase I: Income Test

The ability to pay assessment process is conducted in two stages. Phase I screens all applicants based on an initial income evaluation.<sup>3</sup> In Phase I, DEP will determine whether an individual has resources in excess of a chosen "minimum income" standard. DEP can "close" those cases in which a Phase I analysis indicates that an individual does not have sufficient resources to fund site costs. If, however, the analysis indicates resources in excess of the income cut-off, a Phase II analysis should be conducted.

We recommend that DEP use data from the Farmers Home Administration (FmHA) and the Department of Housing and Urban Development (HUD) as a basis for income comparisons. Every 12 to 18 months, these agencies update Census Bureau income data on a county-by-county basis (see Appendix A). They provide the results to their state offices as a guideline in distributing housing assistance grants and loans. The FmHA income tables specify "low" (80% of median household income) income levels for each county in Maine by family size. We use these data as a "minimum income" guideline appropriate for ability to pay cases.

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<sup>2</sup> Note that "cash flow" differs from "taxable income." First, taxable income does not include all sources of revenue for an individual. For example, some retirement or investment income may be tax-exempt, and excluded on the tax return. Second, some expenses are not fully reflected on a tax return because they are not entirely deductible (e.g. medical costs and consumer loan interest). Lastly, some tax-deductible expenses do not represent an actual cash payment (e.g. depreciation).

<sup>3</sup> Note that "income" as used in this text refers to total cash inflows to the applicant.

Although these income tables were developed specifically for FmHA and HUD programs, they are available to other government offices. DEP can obtain updated versions from the Bangor FmHA office. We choose to use these data for the following reasons:

- It is based on Census data;
- It is regularly updated according to a consistent methodology;
- It establishes several levels of income guidelines; and
- It is used by other government agencies.

DEP has the option of using other data sources in creating its income criteria as well. For example, the Census Bureau generates state median income and national poverty figures annually. DEP could use a value representing national or state income figures if it determines that an income breakdown by household size and county is not necessary. Overall, we believe that the Census data is less preferable because it is not as timely and detailed as the FmHA data.

## Phase II: In-depth Ability to Pay Analysis

The Phase II analysis provides a more thorough assessment of an applicant's financial condition. This analysis is based on the data in the applicant's most recent federal tax return and data the applicant supplies on the Financial Data Request Form. The analysis has three components: (1) an income determination and categorization; (2) an available cash flow calculation; and (3) a net worth and debt capacity assessment. These are each discussed in more detail below.

### **Income Determination and Categorization**

This step identifies and quantifies all sources of the applicant's income. Note that this figure will be different than the income figured on the tax return. This difference is because the tax return identifies only that income that can be taxed, and because some adjustments do not reflect any actual cash outlay. Our goal is to account for all sources of income, whether or not they are taxable.

The income figure is used for two purposes. First, it categorizes the applicant's income relative to an average household of the same size in the same Maine county as the applicant. In particular, we have established three categories:

- Less than 75% of median household income;
- 75% to 125% of median household income; and,
- Greater than 125% of median household income.

This classification is then used in establishing suitable ratios for evaluating the applicant's cash flow and net worth. The income figure is also used in the cash flow calculation, which is discussed in the following section.

### Available Cash Flow Calculation

Next, we determine what amount, if any, of excess money the applicant may have available during a year to pay for assessment or remediation costs, after paying all other living expenses. This determination is based on the income figure already calculated, and expenses the applicant provides in the Financial Data Request Form. As part of this calculation, we allow applicants a "contingency" allowance, to take into account emergencies or unexpected needs.<sup>4</sup> This contingency allowance is based on the income criteria into which the applicant falls (established above). The greater the applicant's income, the lower the percentage contingency allowance. The allowance is shown in Exhibit 2-1.

Exhibit 2-1 INCOME CRITERIA MATRIX			
Gross Income as a Percentage of Median Household Income	Measures		
	Less than 75%	75 to 125%	Greater than 125%
Net Cash Flow Contingency Allowance	15%	10%	5%

For example, if the applicant's income was less than 75% of median household income, the contingency allowance would be 15%. Thus, in calculating cash flow, the applicant's expenses will be increased by 15% before subtracting them from income and calculating available cash flow.

Note that the contingency allowance falls as the applicant's income increases. This inverse relationship keeps the dollar amount of the contingency relatively constant over income categories, but still allows some adjustment for the applicant's actual expenses. The user can adjust both the schedule and percentage of the contingency allowance as he or she wishes.

### Net Worth and Debt Capacity Assessment

The next step is to determine the applicant's net worth and capacity to assume additional debt. These calculations help us understand whether the applicant might be able to repay site costs through assuming more debt or selling some assets.

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<sup>4</sup> This allowance assumes that all living costs identified by the individual are reasonable and not inflated. The user may choose not to grant any contingency allowance if there is reason to believe that the living expenses are inflated, or if the user does not wish to provide such an allowance.

Net worth is measured by subtracting liabilities from assets. If the applicant's liabilities are greater than the assets, then net worth is negative and the applicant is insolvent.<sup>5</sup> The net worth calculation is based on the information provided by the applicant on the Financial Data Request Form. After computing the amount of assets and liabilities, we calculate the ratio of liabilities to assets: a ratio less than one (1.0) indicates that the applicant is solvent.

Most bankers, however, will build a margin of safety into an assessment of the amount of debt that a person or business can carry. For example, for the purchase of a house, many lenders require a minimum down payment, which represents the amount of equity that the lender wants the owner to have in the property. If the owner makes a twenty-percent down payment, then the liability to asset ratio is .80 or 80%  $((1 - 0.20) \div 1.00)$ . This result indicates that the loan is eighty percent of the value of the asset.

We apply this approach in assessing the debt capacity of applicants. Using the income classifications determined at the beginning of Phase II, we compare the applicant's liabilities-to-assets ratio to a value in Exhibit 2-2. The ratios are dependent on the applicant's employment status.

Exhibit 2-2			
NET WORTH CRITERIA MATRIX			
Gross Income as a Percentage of Median Household Income	Measures		
	Less than 75%	75 to 125%	Greater than 125%
Liabilities/Assets Ratio			
• Category A: Applicant retired, nearing retirement, or unemployed	.50	.55	.60
• Category B: Other	.60	.70	.80

This matrix allows the ability to pay analysis to accommodate several important factors:

- (1) Lower income individuals should have a larger margin of safety than higher income individuals because they have less financial flexibility.
- (2) The closer the applicant is to retirement, the larger the margin of safety should be to allow for retirement and increased medical costs. It may also be appropriate to provide a larger margin of safety for an unemployed applicant.

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<sup>5</sup> In this case, we cannot expect the applicant to supply funds from his or her assets, either through sale or assuming more debt.



- (3) Employed individuals have a greater capacity to support debt than those lacking a steady income.

The ratios in Exhibit 2-2 reflect our best judgement of an appropriate range for these values. Normally, businesses with liability-to-asset ratios less than .50 are considered to be in good shape. This is the lowest value we suggest here.

An applicant's ability to assume debt or sell assets is also constrained by his or her ability to make debt payments. The strictest criteria used by mortgage lenders is that all debt payments (mortgage and related payments, credit cards and other loans) should not exceed 36% of income. Therefore, as part of the analysis, we calculate this ratio and compare it to the 36% guideline. Applicants directing more than 36% of their gross income to debt payments may have serious difficulty assuming more debt to reimburse site remediation costs, even if their asset to liability ratio is strong. They may, however, be able to sell some assets in this situation. Applicants who fall below this criteria and who have a strong liability-to-asset ratio, may be able to reimburse site cleanup costs through additional debt.

### Review Process

The ability to pay process can be summarized in six steps. To assist users, we have provided a case tracking sheet that can serve as a "checklist" of activities performed when processing a case. The six steps are as follows:

- Step 1: Send tax data request and General Information Form to the applicant. We suggest that you note the date of the request on the Tracking form. This form can serve as a record for each applicant.
- Step 2: Complete the Phase I analysis using the Phase I Worksheet that matches the applicant's federal income tax return form. Note the date and disposition of the applicant's Phase I analysis on the Tracking Form.
- Step 3: If applicant does not have available resources, no further analysis is required. Notify the applicant, if appropriate. If the Phase I analysis indicates that funds may be available, request that the applicant complete the Financial Data Request Form and return it to DEP. Note the date of request on the Tracking Form.
- Step 4: After receiving applicant's tax return and Financial Data Request Form, complete the Phase II analysis using the appropriate Phase II Worksheet. Note available cash flow and excess assets on the Worksheet and Tracking Form.

Step 5: Assess additional information provided by applicant (see Chapter 6). If appropriate, adjust Phase II analysis. Categorize applicant's financial situation using the Phase II Analysis Outcomes Matrix.

Step 6: Make final determination of applicant's ability to pay. Note disposition on Tracking Form and notify applicant as appropriate.

These steps are summarized in Exhibit 2-3.

## KEY ANALYTICAL DECISIONS

This section briefly identifies some of the most important assumptions that are made in the design of this ability to pay analysis. In general, the analysis is based on data supplied by the applicant on either the federal tax return or the Financial Data Request Form. If these data are incorrect or not fully reflective of the applicant's financial situation, the resulting analysis may be flawed.

Both the Phase I and Phase II analyses are based on the applicant's income. We assume that persons with low income generally have fewer assets and a more limited ability to pay. In a few cases, however, reported income may not be an accurate reflection of an applicant's financial situation. For example, a low-income applicant that fails the Phase I screen might hold a major, non-income producing asset that would allow the applicant to reimburse DEP. We believe that such cases are rare, and that the general benefits and accuracy of the Phase I screening process outweigh the risk of eliminating such a person.

The Phase II income analysis is more detailed, particularly for applicants filing the Form 1040. These applicants may have a very complicated financial situation, including income from sale of stock or property, rental income, farm income, estate or trust income, and income from business entities (partnerships, S-Corporations, and real estate investment trusts). Many times these investments serve as "tax shelters," producing current losses which can reduce the taxpayer's overall taxable income, but quite possibly generating an economic gain in the long run. The calculations that these values are based on are complicated.

We believe that the vast majority of applicants will not have financial situations involving this type of income, or that the effect of these investments will not substantially affect the results of the analysis. This guidance will correctly calculate the net cash flow from rental properties, sole proprietorships and farming activities, which are the most likely business activities in which applicants may be engaged in. In addition, we ask the user to calculate the proportions of income generated by businesses or investments. If this value is significant (i.e., reduces or increases income by at least 20 percent), and the analysis indicates that the applicant cannot reimburse DEP for site cleanup, we recommend that you consult a financial analyst.

## STRUCTURE OF GUIDANCE

The analytical process described in this manual is organized around the three different individual tax forms an applicant may file: the 1040EZ, the 1040A, and the 1040.<sup>6</sup> We devote one chapter to each type of return. We have structured our explanations around the tax return forms for two reasons. The first involves the complexity of the financial material presented. Those individuals with a more involved income situation (who receive, for example, business income or significant investment income) will file a form designed to detail these income sources. An analysis of these income sources is most clearly illustrated through discussions and examples that follow a sample tax return through the Phase I and Phase II analysis. Second, the format of tax return forms suggest that we structure our discussions around them. As we make calculations, we refer to specific lines on the return. In order to provide as much guidance as possible, we go through each form separately and note the source line for the required information.

In each chapter, we demonstrate the analysis by working through a sample case. In the final chapter, we discuss how to use and follow-up on the analyses. This final chapter also discusses how DEP might evaluate more complex tax returns.

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<sup>6</sup> In some instances you may review an applicant who has not filed a tax return. Under certain circumstances (e.g., very low income) individuals are not required to file. See the "Do I have to File?" section of the individual tax form instruction booklets for more information on this topic. In most instances, individuals who do not file tax returns will not be able to repay DEP for site cleanup. However, you should request that the applicant complete an Individual Financial Data Request Form so that you can determine whether he or she has available assets.

The analyses using tax data performed in Chapters 3, 4, and 5 produce estimates of an applicant's ability to pay, given their resources, age, household size and county of residence. At this point in the analytical process, an analyst must determine how to use these results to make a final determination concerning an applicant's ability to pay. In this chapter, we summarize how users can use the Phase II results, how to review applicant data and how DEP might handle unusual or special cases.

### UNDERSTANDING THE PHASE II RESULTS

At the conclusion of the Phase II analysis, the user will have assessed the applicant's cash flow and available assets. The set of potential outcomes is shown in Exhibit 6-1.

Exhibit 6-1		
PHASE II ANALYSIS OUTCOMES		
Assets Available	Cash Flow Available	
	Yes	No
Yes	1	2
No	3	4

The response to each outcome is discussed below.

- Outcome 1:** The applicant has available cash flow and available assets. Therefore, the applicant can afford to reimburse DEP for cleanup and/or abatement. The user should, however, examine the debt payment ratio to determine whether more debt can be assumed. If the applicant's debt payment ratio is less than 36%, then the applicant could reimburse the state through additional debt.
- Outcome 2:** The applicant has insufficient cash flow but available assets. The applicant may be able to reimburse to site costs through the sale of assets, but not out of annual income or additional debt.
- Outcome 3:** The applicant has available cash flow but does not have available assets. Therefore, the applicant should be able to repay site costs through annual income, but not by sale of assets or assumption of debt. The amount of annual payments can be estimated by looking at the Phase II worksheet.<sup>10</sup>
- Outcome 4:** The applicant has insufficient cash flow and does not have available assets. This applicant is unable to repay any site costs.

## GOING BEYOND PHASE II RESULTS

### Verification of Expenses, Assets, and Liabilities

DEP can be fairly certain that the income figures used in the Phase I and Phase II analyses are accurate, given that they are based on an applicant's tax returns.<sup>11</sup> The accuracy of information reported on the Individual Financial Data Request Forms, however, is less certain. This ability to pay guidance process does not make provisions for verifying these data, and additional research may be required in instances where reported figures seem inappropriate.

### Expenses

Part II of the Financial Data Request Form asks applicants to detail their current living expenses. In cases in which an applicant's expenses are greater than or very close to his or her income, a closer examination of these expenses may be appropriate. Appendix E contains the Consumer Price Index measure of the average relative importance of typical urban household

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<sup>10</sup> Line 36 on the Phase II 1040EZ worksheet, Line 44 on the Phase II 1040A worksheet and Line 65 on the Phase II 1040 worksheet indicate the applicant's cash resources.

<sup>11</sup> With the exceptions discussed in Chapter 1.

expenses as of March, 1992.<sup>12</sup> Although we recognize that this index will not exactly mirror the breakdown of expenses in an average Maine household, the measures may be helpful as rough approximations. Note, for example, that the index allocates 17.6 percent of all household expenses to "Food and Beverages." A household with annual expenses of \$17,735 (like AJ Leaks") might therefore be expected to spend about \$3,139 each year on food and beverages.

Obviously this index will not match expenses noted in each ability to pay case that DEP reviews. It might, however, help to highlight those expense claims that are significantly different from the norm. In general, we recommend that DEP review more closely the expenses of those cases in which an applicant's Phase II analysis shows very low available cash flow (Outcomes 2 and 4).

### Assets and Liabilities

Applicants may also understate the estimated value of their assets on the Financial Data Request Form. Again, such instances may be difficult for staff to detect and evaluate. In general, we recommend that DEP take a closer look at those applicants who have a very low or negative net worth (Outcomes 3 and 4).<sup>13</sup> DEP may want to compare the listed value of the applicant's major assets (e.g., their home, vehicles) against average values in the area. Contact the local or county assessor's office for verification of property values, or check newspaper listings for homes in the area. Car values are also readily available from car dealerships or industry "blue books."

### Extenuating Financial Circumstances

Section IV of the Financial Data Request Form, and the General Information Form ask that applicants explain any extenuating circumstances affecting their financial position. This information must be considered in reaching a final determination on an applicant's ability to pay. In completing a Phase II analysis, note first whether the applicant has answered "yes" to any of the nine questions in Section IV of the Financial Data Request Form. If all answers are negative, there is not a problem. If one or more responses are "yes," check to see what additional information is provided. Use this information to evaluate the analysis and outcome produced in the Phase II worksheet.

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<sup>12</sup> The CPI detail report is published monthly and is available in the business section of most libraries. Note that the time period for CPI data may lag the time period for which you have tax data. This should not have significant effect on its use as a tool to roughly calibrate key family expenses.

<sup>13</sup> Note that younger applicants will generally tend to have fewer available assets than older applicants. Younger applicants are likely to have greater liabilities (e.g. college loans, car loans, mortgages).

Specifically, note the following circumstances:

- The applicant is currently involved in any legal actions or property transactions. It may not be possible to determine the applicant's ability to pay until a final settlement on these matters has been reached.
- The applicant can document a legitimate increase in expenditures. For example, the applicant may be able to identify anticipated medical expenditures or expenditures for a dependent's college education. DEP will have to judge whether such anticipated expenses should be deducted from an applicant's current resources in determining his or her ability to repay site costs.
- The applicant has experienced financial difficulty in the recent past. For example, has the applicant declared bankruptcy within the past seven years? If so, perhaps special attention should be paid to determine whether newly acquired assets should be considered as a resource for site cost reimbursement.
- The applicant is currently experiencing financial difficulty. As we noted earlier, high levels of debt compared to income often indicates that an applicant is financially over-extended. Other indicators to look for include repossession of property or delinquency in payment of bills (e.g., utility or debt payments). These applicants will experience difficulty in obtaining a loan to cover site cost reimbursement, and will probably have to pay a higher interest rate. Long-term payment plans featuring monthly installments toward site cost repayment may be a good alternative for these applicants.

DEP will have to determine the extent to which these questions affect the applicant's ability to pay. In most instances, documentation supporting the individual's financial circumstances should be included with his or her Financial Data Request Form. If this information is not included, DEP should request that an applicant provide further evidence supporting the claim that he or she is unable to reimburse the state.

#### Significant Extraordinary or Investment Income

Occasionally DEP may find that an individual has claimed significant gains or losses from capital transactions (e.g., from the sale of stock, property, or other assets) or from investments (e.g., stock dividends, interest income). As noted in Chapter 1, we recommend that cases involving extraordinary income gain or loss in excess of 20 percent of total income be reviewed by a financial analyst. Capital losses often serve to significantly reduce an individual's taxable income, and for that reason are sometimes incurred intentionally. Such losses do not necessarily have a negative effect on cash flow. Applicants claiming significant gains or losses should be more closely inspected.



### Currently Operating Business

The case of Russ T. Tank is one example of an applicant currently operating a sole proprietorship. Assets and income from a sole proprietorship are often indistinguishable from the assets and income of the applicant. In some cases, applicants may be overstating their business expenses (as detailed in Schedule C) in order to reduce business income, and hence the income of the applicant. Such occurrences are sometimes difficult to detect, and when found, can be difficult to substantiate. In general, special attention is usually warranted if the business has incurred a loss, or if business income is significantly below the industry standard. In these cases, note whether business expenses (particularly those related to travel, entertainment, employee benefit programs, officers' salaries, pension and profit sharing plans) seem high in comparison to those of similar businesses. These cases may require additional evaluation by a financial analyst.

### CONCLUSION

While we cannot predict circumstances for all DEP applicants, in this chapter we have tried to highlight cases that may merit closer attention. Some cases may require additional evaluation by a financial analyst. However, we believe that the vast majority of DEP's individual ability to pay cases can be resolved through the two phase analytical process described in this manual. The Phase I and Phase II processes will also serve to highlight those cases requiring additional attention, and lay the groundwork for subsequent analyses.



# INDIVIDUAL ABILITY TO PAY CLAIM

## General Information Form

Case Name: MACHTIAS, ME

We are requesting financial information to help us evaluate your ability to reimburse the state of Maine for environmental remediation or abatement activities. Please fill out this form and submit signed, complete copies of your last three years federal income tax return. The Maine Department of Environmental Protection may request documentation supporting the information you provide on this form.

Name: <u>ANDREA J. LEAKS</u>	
Spouse's Name: <u>—</u>	
Address: <u>123 LIBERTY STREET</u> <u>MACHTIAS, ME</u>	
Phone Number: Home (207) <u>287-2651</u> Work (207) <u>287-7826</u>	
County of Residence: <u>WASHINGTON</u>	
Does the information provided on your federal income tax return accurately reflect your current financial situation? Please describe below additional information that you would like us to consider in evaluating your case (for example, anticipated major expenditures or changes in income). Use additional sheets if necessary.	
Are you currently participating in any type of federal or state assistance program (for example, AFDC, food stamps, HUD or FmHA housing assistance, or Medicaid)? Please describe below. Attach additional pages if necessary.	
Do you own your personal residence?	If yes, how many acres?
Do you own any other property?	

Falsification of any information contained on this form or submitted in support of this request is a violation of Title 38 M.R.S.A., Section 349 and upon conviction a person is subject to a fine of not more than \$10,000 or by imprisonment for not more than 6 months or both.

### Certification

I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the base of my knowledge and belief.

Signature Andrea J. Leaks

Date 4/18/93

# INDIVIDUAL ABILITY TO PAY CLAIM

## Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to reimburse the state of Maine for environmental remediation or abatement activities. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly if you feel your situation is not adequately described through the information requested here.

Falsification of any information contained on this form or submitted in support of this request is a violation of Title 38 M.R.S.A., Section 349 and upon conviction a person is subject to a fine of not more than \$10,000 or by imprisonment for not more than 6 months or both.

### Certification

I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief.

Signature

Date

Andrea J Leaks

4/24/93

Name: ANDREA J. LEAKS
Spouse's Name: —
Address: 123 LIBERTY STREET MALDEN, ME
County of Residence: WASHINGTON

## PART I. BACKGROUND INFORMATION

1. MEMBERS OF HOUSEHOLD (List the head of the household and all persons living with you)			
Name	Age	Relationship to Head of Household	Currently Employed?
ANDREA J. LEAKS	31	SINGLE/HEAD	YES

2. EMPLOYMENT (List all jobs held by persons in household)			
Name	Employer	Length of Employment	Annual Salary
ANDREA J. LEAKS	J.J CONSTRUCTION, INC	6 YEARS	22,404

## PART II. CURRENT LIVING EXPENSES

Please list personal living expenses which were typical during the last year and indicate if any of these values are likely to change significantly in the current year. Please do not include business expenses. If you are the owner of an operating business, please attachment any available financial statements.

Expense	Amount	Period of Payment (check one)				For Agency Use Only
		Weekly	Monthly	Quarterly	Yearly	
<b>A. Living Expenses</b>						
1. Rent	290		✓			3,480
2. Home maintenance						
3. Auto fuel maint./other transp.	50		✓			600
4. Utilities						
a. Fuel (gas,oil,wood,propane)	15		✓			180
b. Electric	10		✓			120
c. Water/sewer						
d. Telephone	30		✓			360
5. Food	55	✓				2,860
6. Clothing, personal care	75		✓			900
7. Medical costs	15		✓			180
<b>B. Debt Payments</b>						
1. Mortgage payments						
2. Car payments	240		✓			2,880
3. Credit card payments	20		✓			240
4. Educational loan payments						
<b>C. Insurance</b>						
1. Household insurance						
2. Life insurance	45			✓		180
3. Automobile insurance	750				✓	750
4. Medical insurance						
<b>D. Taxes</b>						
1. Property taxes						
2. Federal income taxes	2,539				✓	2,539
3. State income taxes	1,054				✓	1,054
4. FICA	1,412				✓	1,412
<b>E. Other Expenses</b>						
1. Childcare						
2. Current School tuition/expenses						
3. Legal or professional services						
4. Other (itemize on separate page)						
<b>Total Current Expenses</b>						<b>17,735</b>

### PART III. NET WORTH

Please provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish note such items with an "E".

If you are the sole proprietor of a business, please lists business assets and liabilities, in addition to personal assets and liabilities. Please mark these entries with a "B" to identify them as business assets and liabilities.

1. BANK ACCOUNTS (Checking, NOW, Savings, Money Market, etc.)		
Name of Bank or Credit Union	Type of Account	Current Balance
MACHIAS SAVINGS + TRUST	SAVINGS	750
MACHIAS SAVINGS + TRUST	CHECKING	981
For Agency Use Only - Total Current Balance in Bank Accounts		1,731

2. INVESTMENTS (Stock, Bonds, Mutual Funds, Options, Futures, CD's, Real Estate Investment Trusts (REIT), etc.)		
Investment	Number of Shares or Units	Current Market Value
10 yr US TREASURY BOND	2	125
5 yr US TREASURY BOND	1	60
For Agency Use Only - Total Current Market Value of Investments		185

3. RETIREMENT FUNDS AND ACCOUNTS (IRA, 401(k), Keough, vested interest in company retirement fund, etc.)	
Description of Account	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Retirement Funds and Accounts	

4. LIFE INSURANCE POLICIES			
Policy Holder	Issuing Company	Policy Value	Cash Value
A J LEAKS	MUTUAL LIFE CO.	20,000	500
For Agency Use Only - Total Value of Life Insurance Policies			500

5. VEHICLES (Cars, Trucks, Motorcycles, Recreation Vehicles, Motor Homes, Boats, Airplanes, etc.)		
Model	Year	Estimated Market Value
1989 NISSAN PATHFINDER	1989	9,500
1988 SAMARAI MOTORCYCLE	1988	4,000
For Agency Use Only - Total Estimated Market Value of Vehicles		13,500

6. PERSONAL PROPERTY (Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc. Only list items with a value greater than \$500.00)	
Type of Property	Estimated Market Value
ONKYO STEREO SYSTEM	850
For Agency Use Only - Total Estimated Market Value of Personal Property	
	850

7. REAL ESTATE (Land, Buildings, Land with Buildings)		
Location	Description of Property	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Real Estate		

**8. OTHER ASSETS**

Type of Asset	Estimated Market Value
CARPENTRY TOOLS (HAND SAW, ROTARY SAW, MISC. TOOLS + EQUIPMENT)	1,100
For Agency Use Only - Total Other Assets	1,100

**9. CREDIT CARDS AND LINES OF CREDIT**

Credit Card/Line of Credit (Type)	Owed To	Balance Due
CITIBANK MASTERCARD	CITIBANK	480
COLUMBIA NATIONAL VISA	COLUMBIA NAT'L BANK	270
SEARS CHARGE	SEARS	90
For Agency Use Only - Total Balance Due on Credit Cards and Lines of Credit		840

**10. VEHICLE LOANS (Cars, Trucks, Motorcycles, Recreation Vehicles, Motor Homes, Boats, Airplanes, etc.)**

Vehicle (Model and Year)	Owed To	Balance Due
1989 NISSAN PATHFINDER	NISSAN CREDIT CORP.	10,280
1988 SAMARAI MOTORCYCLE	NATIONAL BANK OF MAINE	1,290
For Agency Use Only - Total Balance Due on Vehicle Loans		11,570

11. FURNITURE AND HOUSEHOLD GOODS LOANS:		
List Item	Owed To	Balance Due
For Agency Use Only - Total Balance Due on Furniture and Household Goods Loans		

12. MORTGAGES AND REAL ESTATE LOANS			
Type of Loan	Owed To	Property Secured Against	Balance Due
For Agency Use Only - Total Balance Due on Mortgages and Real Estate Loans			

13. OTHER DEBT (Amounts due to individuals, Fixed obligations, Taxes Owed, Overdue Alimony or Child Support, etc.)		
Type of Debt	Owed To	Balance Due
For Agency Use Only - Total Balance Due on Other Debt		



### PART IV. ADDITIONAL INFORMATION

Please respond to the following questions. For any question that you answer "Yes," please provide additional information on separate pages or at the bottom of this page.

QUESTION	YES	NO
1. Do you have any reason to believe that your financial situation will change during the next year?		X
2. Are you currently selling or purchasing any real estate?		X
3. Is anyone (or any entity) holding real or personal property on your behalf (e.g. a trust)?		X
4. Are you a party in any pending lawsuit?		X
5. Have any of your belongings been repossessed in the last three years?		X
6. Are you a Trustee, Executor, or Administrator?		X
7. Are you a participant or beneficiary of an estate or profit sharing plan?		X
8. Have you declared bankruptcy in the last seven years?		X
9. Do you receive any type of federal aid or public assistance?		X

**EXHIBIT F**

**Analysis of 1997 appeals by case.**

FUND INSURANCE REVIEW BOARD – 1997 APPEALS DATE ANALYSIS

Appellant	Date Appeal Filed	Date Chapter Sent to Appellant	DEP Position Stmt. Date	Date Hearing Scheduled	Continuance Date	Reasons for Continuance	Date Actually Heard	Outcome
Roland A. Genthner	01/27/97	01/29/97	03/11/97-DEP revised their order	---	---	---	N/A	Withdrawn
Town of Manchester	01/29/97	---	04/28/97	05/13/97	---	---	05/13/97	Upheld Comm.
East Stoneham Country Store	02/04/97	02/27/97-My position started 02/11/97-This was not discovered until this date.	04/25/97	05/13/97	06/10/97	Appellant did not show up for meeting. No response from any letters or calls.	N/A	Continued.
---	---	---	---	06/10/97	---	Appellant did not show up for meeting. No response from any letters or calls.	06/10/97	Upheld Comm.
Maine Tire & Supply Co.	03/18/97	03/19/97	04/28/97	05/13/97	---	---	05/13/97	Overtured Comm.
---	---	---	---	06/10/97	07/08/97	Discussion regarding the Board Order.	N/A	Continued.
---	---	---	---	07/08/97	08/12/97	No appeals meeting.	N/A	Continued.
---	---	---	---	08/12/97	---	---	08/12/97	Overtured Comm.
Thomas A. Toy, III	03/21/97	03/27/97	04/29/97	05/13/97	06/10/97	Postponed for unknown reason.	N/A	Continued.
---	---	---	---	06/10/97	---	---	06/10/97	Upheld Comm.
Geary S. Bonville	04/09/97	04/10/97	05/27/97	06/10/97	07/08/97	Appellant cancelled.	N/A	Continued.
---	---	---	---	07/08/97	08/12/97	No appeals meeting.	N/A	Continued.
---	---	---	---	08/12/97	---	DEP requested continuance because of on-going discussions to resolve issue.	N/A	Continued.
---	---	---	---	09/09/97	---	---	09/09/97	Withdrawn by DEP.
Pepperell Associates	04/10/97	04/11/97	05/28/97	06/10/97	07/08/97	Attorney unable to make meeting.	N/A	Continued.
---	---	---	---	07/08/97	08/12/97	No appeals meeting.	N/A	Continued.
---	---	---	---	08/12/97	09/09/97	Attorney had family emergency.	N/A	Continued.

EXHIBIT F

FUND INSURANCE REVIEW BOARD – 1997 APPEALS DATE ANALYSIS

Appellant	Date Appeal Filed	Date Chapter Sent to Appellant	DEP Position Stmt. Date	Date Hearing Scheduled	Continuance Date	Reasons for Continuance	Date Actually Heard	Outcome
---	---	---	---	09/09/97	10/14/97	Attorney had family emergency.	N/A	Continued.
---	---	---	---	10/14/97	11/18/97	Attorney in hospital.	N/A	Continued.
---	---	---	---	11/18/97	---	---	11/18/97	Overtured Comm.
Video Video, Inc.	05/12/97	05/15/97	08/28/97	09/09/97	---	Withdrawn by appellant's attorney on 09/10/97.	N/A	Withdrawn.
Sedgewick Store (Palmer)	05/20/97	05/21/97	07/25/97	08/12/97	09/09/97	Panel heard, continued so panel could review prior appeals.	N/A	Continued.
---	---	---	---	09/09/97	---	---	09/09/97	Overtured Comm.
---	---	---	---	10/14/97	---	Reimbursements	10/14/97	Approved.
Lakeside Market	05/22/97	05/23/97	07/25/97	08/12/97	09/09/97	Appellant family emergency.	N/A	Continued.
---	---	---	---	09/09/97	10/14/97	Attorney requested continuance.	N/A	Continued.
---	---	---	---	10/14/97	11/18/97	Attorney presented new evidence, panel requested continuance.	N/A	Continued.
---	---	---	---	11/18/97	12/09/97	DEP unable to attend.	N/A	Continued.
---	---	---	---	12/09/97	---	---	12/09/97	Overtured Comm.
Green, George L.	06/02/97	06/04/97	07/25/97	08/12/97	09/09/97	Appellant asked to continue.	N/A	Continued.
---	---	---	---	09/09/97	10/14/97	Attorney was not able to review material in time for meeting.	N/A	Continued.
---	---	---	---	10/14/97	---	---	10/14/97	Upheld Comm.
Frizzle, Allan	08/06/97	08/07/97	08/22/97 Notified of Inability to Pay	---	---	---	N/A	Notified of Inability to Pay.
Wing, George S.	08/14/97	08/15/97	09/10/97 Notified of Inability to Pay	---	---	---	N/A	Notified of Inability to Pay.
Sylvestre, Don's Mkt.	09/22/97	09/23/97	10/31/97	11/18/97	---	---	11/18/97	Overtured Comm.
Bernier, Robert	10/17/97	10/17/97	11/24/97	12/09/97	01/13/98	Appellant not able to attend meeting, no transportation.	N/A	Continued.

*FUND INSURANCE REVIEW BOARD -- 1997 APPEALS DATE ANALYSIS*

Appellant	Date Appeal Filed	Date Chapter Sent to Appellant	DEP Position Stmt. Date	Date Hearing Scheduled	Continuance Date	Reasons for Continuance	Date Actually Heard	Outcome
---	---	---	---	---	01/13/98	---	---	---
BnW Variety	10/28/97	10/18/97	11/24/97	12/09/97	---	---	12/09/97	Overturned Comm.