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**Annual Report of the
Fund Insurance Review Board
Submitted to the Joint Standing Committee
on Natural Resources**

February 15, 2001



February 14, 2001

Senator John L. Martin, Chair
Natural Resources Joint Standing Committee
3 State House Station
Augusta, ME 04333-0003

Representative Scott W. Cowger, Chair
Natural Resources Joint Standing Committee
2 State House Station
Augusta, ME 04333-0002

Dear Senator Martin and Representative Cowger:

I am pleased to present the Joint Standing Committee on Natural Resources with the Fund Insurance Review Board's Annual Report for the calendar year ending December 31, 2000.

If you have any questions you may contact either David Markovchick of the Finance Authority of Maine at 623-3263 or me at the Washington Hancock Community Agency at 546-7544.

Sincerely,

A handwritten signature in cursive script that reads "Michael Bonzagni".

Michael Bonzagni, Chair *ve*
Fund Insurance Review Board

Enclosure

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, 2000 through the period ending December 31, 2000, with the exception of activities related to the Wells Waste Oil Clean-up Fund. The Wells Waste Oil Clean-up Fund Report, included as **Exhibit D**, highlights the Board and FAME's experience in administering this Fund through December 31, 2000. The second part of this report 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 W. Aho, Esq., Chair

Jamie Py

John Babb, Sr.

Michael Bonzagni *

Donald C. Almy *

Robert Bender, Sr. *

Tina Schneider, Esq., Vice Chair *

Jerry Mansfield *

David Lennett, DEP

Steven Dodge, SFMO

*Appeals panel member

APPEALS ACTIVITIES:

During the calendar year ending December 31, 2000, the Fund Insurance Review Board processed a total of 10 appeals. Of these, the Appeals Panel of the Fund Insurance Review Board heard six appeals. In one case, the Commissioner's/State Fire Marshal's decision was upheld in part and overturned in part. In one the Commissioner's/State Fire Marshal's decision was upheld in part and remanded in part. In three cases the Commissioner's/State Fire Marshal's decisions were upheld. Four appeals were withdrawn. One appeal, which was previously tabled, is waiting to be heard. In 2000, there were two FIRB decisions on appeal to State courts. In one case, the Maine Supreme Court affirmed a 1999 FIRB decision that had upheld a decision by the Commissioner. In another case, an applicant to the Fund appealed from a 1999 decision upholding a decision by the Commissioner, and the Superior Court affirmed the FIRB decision. That judgment is currently on appeal to the Maine Supreme Judicial Court. In carrying out its responsibilities, the full Board held five business meetings and four meetings of the Appeals Panel during which hearings were conducted. Attached, as **Exhibit A** is a copy of an analysis of 2000 appeals by case.

LEGISLATION AND RULE MAKING

P.L. 1995 Ch. 399 empowered the Fund Insurance Review Board to order an independent audit of the Ground Water Oil Clean-Up Fund. In July 2000, the Board engaged the accounting services of MacDonald Page Schatz Fletcher & Associates to audit the Fund for the fiscal year ending June 30, 2000. A copy of the final audit is included at the end of this Report as **Exhibit B**. This was the fourth audit of the Fund.

RECOMMENDATION FOR LEGISLATIVE CHANGE

The Board voted not to submit legislation in this session but rather to support any appropriate legislation that clarifies the statute regarding the correct time at which to determine the number of facilities owned by a facility owner is the time of discovery of the discharge.

OTHER BUSINESS:

The Board filed its Legislative Agenda on August 14, 2000. This is attached as **Exhibit C**.

PART II
ADMINISTRATION OF THE FUND
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PART II

Administration of the Fund Department of Environmental Protection

A. Introduction

This report is submitted pursuant to the requirements of Title 38 M.R.S.A., §570-H.2, which requires a report to be submitted to the joint standing committee of the Legislature with jurisdiction over natural resources matters on the department's and the board's experience administering the Fund, including clean-up activities and 3rd party damage claims.

Pursuant to the Public Laws of 1999, Chapter 714, Section 4, the Department of Environmental Protection recently completed a detailed analysis of the Ground Water Oil Clean-up Fund. A report covering the analysis was submitted to the Joint Standing Committee on Natural Resources of the 120th Maine Legislature on December 15, 2000. That report entitled Ground Water Oil Clean-up Fund Report covered the vast majority of information which is also required by 38 M.R.S.A. §570-H.2.

This report is intended to supplement the report of December 15, 2000 and provide additional details regarding the department's experience with regard to the processing of applications for the coverage of clean-up costs and the processing of 3rd party claims.

B. Summary of revenues and expenditures.

Table I illustrates financial activity in the Ground Water Oil Clean-up Fund for the fiscal year (FY) 2000 (July 1, 1999 – June 30, 2000). Total net income for FY 2000 was \$11,251,434 while expenditures totaled \$14,257,603.

During the fiscal year 2000, there was a significant decrease in net revenue of \$3,371,491 and a decrease in expenditures of \$162,789 when compared to the 1999 fiscal year. A reduction in petroleum imports as compared to previous years is the primary reason for reduced revenues. Additionally, the surcharge which is imposed when the balance in the Fund remains below \$3 million dollars for three consecutive months had not been collected since April, 1998. In May, 2000, the surcharge was activated and remains in effect. However, during FY 2000, the surcharge was in effect for only two months. When the surcharge is imposed, the additional revenue is not received for four months due to fee notification requirements and the reporting and submission cycle. Hence, no additional revenue was actually received as a result of the surcharge during FY 2000. In FY 2000 fee refunds to petroleum distributors for oil not stored in Maine totaled \$1,801,183. This represents an increase of approximately \$64,358 when compared to FY 99.

The available cash balance in the Fund at the end of the fiscal year was \$2,939,261, while the net Fund availability was \$812,170.

During FY 2000 one-time sources of revenue included the return of \$1,000,000 from the low interest loan monies administered by the Finance Authority of Maine. The Fund Insurance Review Board authorized this return which was credited to the Fund in December, 1999. An additional \$46,000 was repaid to the Fund from the Maine Environmental Protection Fund. Without these one-time sources of revenue and careful management of clean-up expenditures there would have been a deficit in the fund balance. There are no additional payments due from any dedicated accounts. All loans have been repaid to the Fund.

TABLE 1

**STATEMENT OF CASH POSITION
GROUNDWATER OIL CLEAN-UP FUND
AT JUNE 30, 2000**

BALANCE FORWARD (July 1, 1999)	\$ 5,945,430
INCOME	\$ 13,052,617
Minus Fee Refunds	- \$ 1,801,183
NET INCOME	\$ 11,251,434
EXPENDITURES	
Personal Services	\$ 2,234,795
All Other	\$ 9,882,277
Capital	\$ 52,722
Indirect Cost Transfers	\$ 1,697,407
Other Transfers (Excluding FAME)	\$ 390,402
FAME Cash Payments (FY 2000)	\$ - 0 -
NET EXPENDITURES	\$ 14,257,603
CASH BALANCE (6/30/2000)	\$ 2,939,261
ENCUMBRANCES (6/30/2000)	\$ 2,048,409
INDIRECT COST OBLIGATION (6/30/2000) (untaken)	\$ 78,682
NET FUND AVAILABILITY (6/30/2000)	\$ 812,170

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 OIL CLEAN UP FUND IS \$12,500,000.

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 for eligibility determinations for aboveground oil storage facilities are filed with the Office of the Fire Marshal. Tables 2, 3 and 4 provide statistics for eligibility and ineligibility determinations.

TABLE 2

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

Total Received (July 1, 1990 - Dec. 31, 2000)	542
Total Eligible	486
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - December 31, 2000	201
Total Ineligible	56
Total Pending	0

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 installation, operation and removal 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)).

From January 1, 2000 through December 31, 2000, the Department received 3 applications for the coverage of clean up costs. There are no pending applications. The Department received 9 fewer applications compared to the number of applications received in 1999.

TABLE 3

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

Total Received (June 16, 1993 - December 31, 2000)	833
Total Eligible	784
Total Ineligible	42
Total Pending	0
Total Void/Withdrawn	7

During calendar year 2000, the Office of State Fire Marshal reported receiving 105 applications. In calendar year 1999, the Office of State Marshal reported receiving 106 applications.

TABLE 4

Total Applications (sum of Tables 2 and 3)

Total Received	1,375
Total Eligible	1,270
Total Ineligible	98
Total Pending	0
Total Void/Withdrawn	7

D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 43 claims for third party damages against the Ground Water Oil Clean up Fund.

During calendar year 2000, the Department completed processing of 22 claims and awarded a total of \$89,968 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 are not filed because connections to existing water supplies and installation of treatment systems and individual well replacements are accomplished in conjunction with site clean-up and without filing a formal claim. Claims must be filed however, prior to the award of any cash settlement.

For third party claims with a cash award over the previous eleven (11) years, the average cash award is approximately \$17,061. The average cash award has changed, from an average of \$5,000 through 1996; \$9,123 through 1997, \$15,718 through 1998, and \$18,445 in 1999. Cash settlements reflect compensation for personal property, real property, loss of income and/or medical expenses related to discharges of oil. Remedial costs associated with third party claims are calculated separately as clean up costs.

During calendar year 2000, 8 claims were dismissed, withdrawn or settled without a cash award. Of the 14 claims processed which included a cash award, very few included large property devaluation or point of entry drinking water operation and maintenance subsidies. This resulted in a low average cash award per claim processed. The average cash award to third party claimants for calendar year 2000 was \$6,426. In comparison, the average cash award during calendar year 1997 was \$19,695, in calendar year 1998 it was \$29,550, and in calendar year 1999 it was \$22,762.

E. Compliance with Tank Abandonment Schedule.

Title 38 M.R.S.A. section 563-A requires all underground oil storage facilities not constructed of fiberglass, cathodically protected steel or other non-corrosive materials approved by the Department to be properly abandoned in accordance with a pre-determined compliance schedule. Non-conforming facilities were subject to proper abandonment by October 1, 1989;

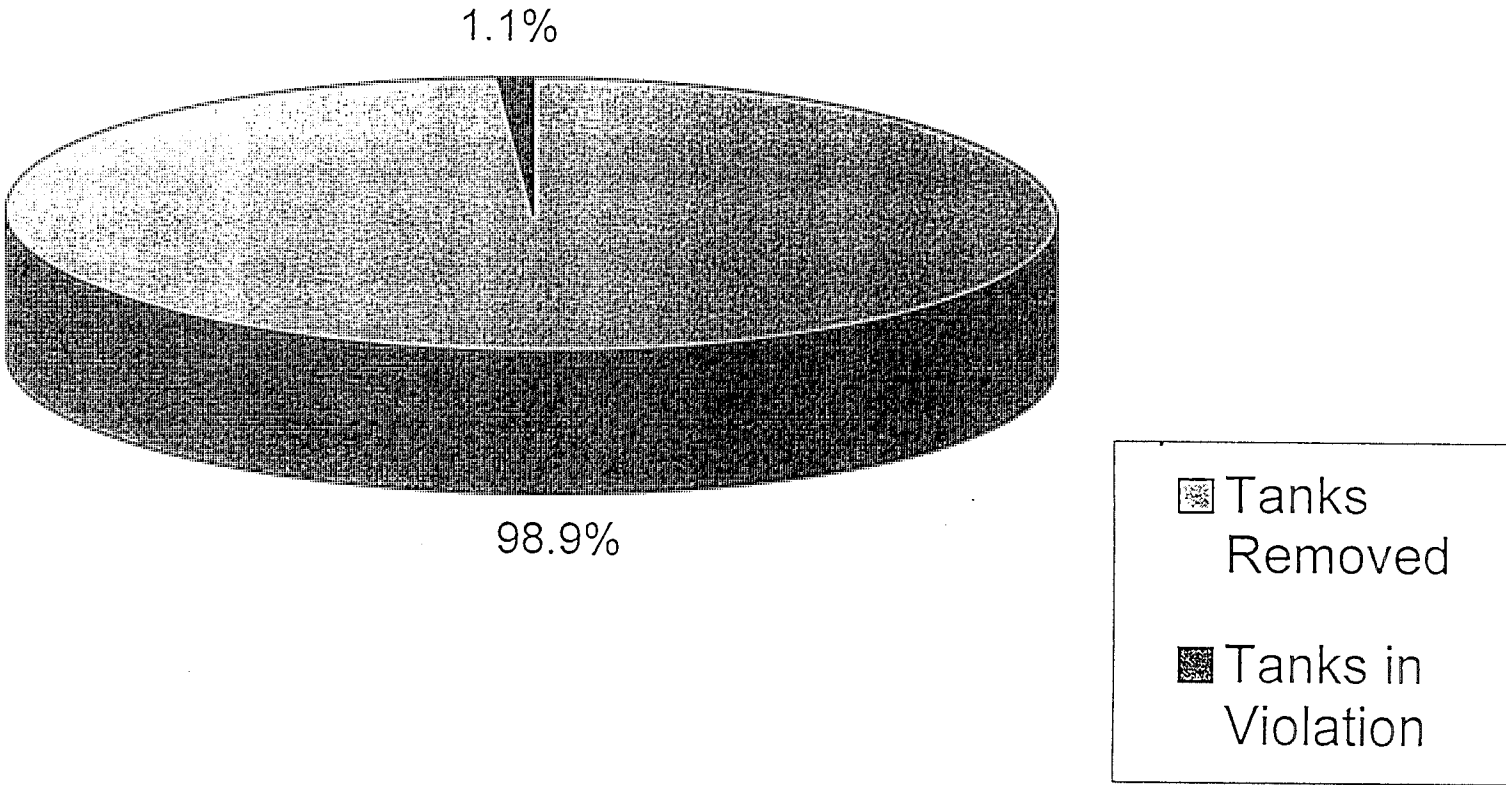
1991; 1994 and 1997 based upon tank age and proximity to drinking water supplies and sand and gravel aquifers. Municipalities and school administrative districts were required to comply with a separate schedule which included a final deadline of October 1, 1998.

The tables on page 6 and 7 illustrate the record of compliance as of December 31, 2000 with the removal schedule mandated in statute. All non-conforming facilities should have been removed or otherwise properly abandoned by the final deadline of October 1, 1998. It should be noted that these numbers reflect only those facilities that have been registered with the Department.

Approximately 34,723 registered tanks were scheduled for removal through October 1, 1998. About 34,331 facilities have been properly removed or abandoned in place. From December 31, 1999 to December 30, 2000 there were 125 additional nonconforming tanks registered, a reduction of 30 from the previous year. As of December 31, 2000 there were approximately 392 tanks remaining to be properly removed or abandoned in place. Residential locations account for 269 of these non compliant tanks. Approximately 49 of these tanks have been physically removed, however, the owners have failed to have a site assessment performed to determine if clean up actions are necessary.

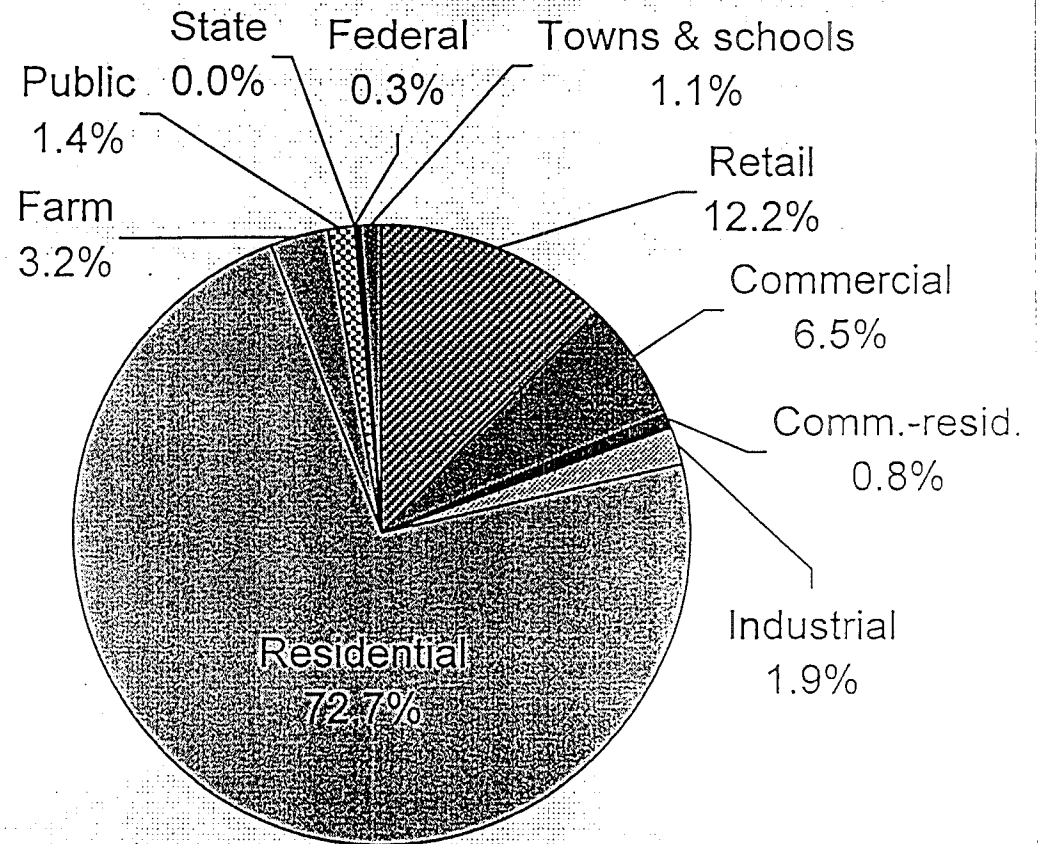
Currently there are approximately 5,843 conforming and non-conforming underground oil storage tanks registered in the State of Maine. There are an additional 1,266 underground oil storage tanks which have been properly and permanently abandoned in place (1,201) and tanks which have nearly completed the removal process (65 site assessments are delinquent). There are 25 tanks which are planned for installation.

Compliance with Bare Steel Tank Removal as of Dec. 31, 2000



Remaining Bare Steel Tanks by Category (January, 2001)

- Retail
- Commercial
- Comm.-resid.
- Industrial
- Residential
- Farm
- Public
- State
- Federal
- Towns & schools



F. Fund Adequacy

The Ground Water Oil Clean-up Fund Report, December 15, 2000 projected a structural deficit of \$1,209,116 in FY 01. That report provides three scenarios and recommendations for improving the rate at which sites are cleaned up and provided revenue need estimates to address the structural deficit, accelerate the clean-up program, and/or fully fund the AST replacement program.

G. Department Recommendations

As stated in its report of December 15, 2000, the Department makes the following recommendations:

1. Re-assign existing DEP personnel (staff engineer) to administer a contract leading to the clean-up of sites where clean-up is largely completed.
2. Seek authority to establish two new positions in the Eastern Maine Regional Office to reduce the current project workload to approximately 25 to 30 sites per employee, while moving several current DEP employees and an Attorney General position off the Fund. The result will be a savings of approximately \$10,000 to the Fund.
3. Seek authority to prevent releases from underground oil storage facilities by:
 - a. establishing a "tag" program to prohibit deliveries of oil to facilities that have not demonstrated compliance with the annual inspection requirement;
 - b. developing siting standards for new underground oil storage facilities,
 - c. prohibiting delivery of petroleum to non-conforming underground oil storage facilities which are in violation of the removal/proper abandonment schedule;
4. Complete a review of other financial assurance mechanisms and possible changes to the existing mechanism to evaluate if there could be increased incentives implemented to minimize environmental releases. A report covering this topic is due to the Legislature by May 15, 2001.
5. Complete a review of the adequacy of the current efforts to minimize releases from AST's. This includes a review of the adequacy of the current jurisdictional framework governing AST's, the adequacy of state agency resources devoted to the AST programs, and the adequacy of existing AST requirements. A task force

has begun meeting to address these issues and is scheduled to submit a report by January 2002.

6. Implement the AST replacement loan program by expending up to \$2,500,000 annually as authorized by the Legislature.
7. Seek authority to raise the surcharge allowed under FIRB rule, Chapter 4 to increase the trigger limits from the current \$3,000,000 and \$5,000,000 to \$5,000,000 and \$7,000,000 respectively. This would allow the surcharge to be "turned on" when the balance drops to \$5,000,000 and "turned off" when the Fund balance reaches \$7,000,000.
8. Use revenue generated from the repayment of loans under the UST loan program as a contingency for unforeseen clean up costs, fully fund the AST replacement loan program, and/or provide assistance to ust owners needing tank upgrades

EXHIBIT A

Case-by-Case Analysis of Appeals for 2000

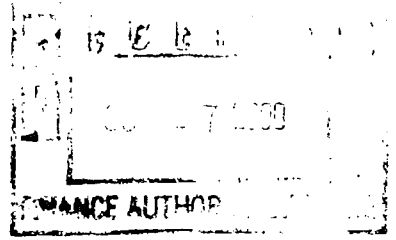
FUND INSURANCE REVIEW BOARD - 2000 APPEALS ANALYSIS

APPELLANT	DATE APPEAL FILED	DATE CHAPTER SENT TO APPELLANT	DEP/SFMO POSITION STATEMENT DATE	DATE HEARING SCHEDULED	CONTINUANCE DATE	REASONS FOR CONTINUANCE	DATE ACTUALLY HEARD	OUTCOME
George Wing d/b/a Wing's Tank & Tummy	08/14/97	08/15/97	3/10/2000	4/11/2000	--	On hold with DEP since 1997 for "Inability to Pay" review.	--	--
	01/27/00	01/31/00	03/10/00	04/11/00	--	ITP denied; appeal re-opened.	04/11/00	Commissioner upheld
Ayotte's Country Store	06/22/98	06/22/98	08/13/98	09/08/98	07/11/00	DEP & appellant trying to work out an agreement	07/11/00	Tabled
- Motion to Strike	08/03/00	--	--	11/06/00	--	--	11/06/00	Motion granted
- Original Tabled Appeal	--	--	--	01/09/01	01/09/01			
Thomas Laplante d/b/a Canaan Superette	11/16/99	12/01/99	12/22/99	01/11/00	04/11/00	Attorney on vacation 1/11/00	04/11/00	Commissioner upheld in part; overturned in part
Weston's Mobil Daniel & Linda Weston	12/06/99	12/08/99	--	01/09/01	--	DEP & Appellant trying to work out an agreement	--	Withdrawn by Appellant 12/15/00
GOC Inc. / Brown's Mobil	02/02/00	02/07/00	06/15/00	04/11/00	07/11/00	DEP & appellant trying to reach an agreement	07/11/00	Commissioner upheld
Ryder Transportation Services	02/03/00	02/07/00	03/23/00	04/11/00	--	--	--	Withdrawn 4/7/00
Robert & Glenda DiPompo Jay Diesel Gas	02/08/00	02/09/00	03/21/00	04/11/00	07/11/00	Appellants not available 4/11/00	07/11/00	Commissioner upheld
Pine Tree Service Center, Inc.	02/14/00	02/16/00	03/23/00	04/11/00	11/06/00	Attorney not available 4/11/00 or 7/11/00	--	Withdrawn by appellant - 11/3/00
Jan Oleksiak & Mark McDonald	05/24/00	05/26/00	06/16/00	07/11/00	--	--	07/11/00	Commissioner upheld in part; remanded in part
JCR Enterprises d/b/a The County Quikstop	08/02/00	08/03/00	--	11/06/00	--	--	--	Withdrawn by Appellant 10/17/00

EXHIBIT B

Audit of Fund for Fiscal Year Ending June 30, 2000.

Macdonald Page Schatz Fletcher



The Fund Insurance Review Board
Serving as Audit Committee
Ground Water Oil Cleanup Fund
State of Maine
Department of Environmental Protection
Augusta, Maine

We have audited the statements of cash and fund balance, and the related statements of receipts and disbursements and changes in cash balance of Ground Water Oil Cleanup Fund for the year ended June 30, 2000 and have issued our report thereon dated September 7, 2000. Professional standards require that we provide you with the following information related to our audit.

Our Responsibilities Under Generally Accepted Auditing Standards and Government Auditing Standards

As stated in our engagement letter dated May 3, 2000, our responsibility, as described by professional standards, is to plan and perform our audit to obtain reasonable, but not absolute, assurance about whether the financial statements are free of material misstatement and are fairly presented in accordance with the cash basis of accounting. Because an audit is designed to provide reasonable, but not absolute assurance and because we did not perform a detailed examination of all transactions, there is a risk that material errors, fraud, or other illegal acts may exist and not be detected by us.

As part of our audit, we considered the internal control of Ground Water Oil Cleanup Fund. Such considerations were solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed test of Ground Water Oil Cleanup Fund's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our tests was not to provide an opinion on compliance with such provisions.

Significant Accounting Policies

Management has the responsibility for selection and use of appropriate accounting policies. In accordance with the terms of our engagement letter, we will advise management about the appropriateness of accounting policies and their application. The significant accounting policies used by Ground Water Oil Cleanup Fund are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies were not changed during the year ended June 30, 2000. We noted no transactions entered into by Ground Water Oil Cleanup Fund during the year that were both significant and unusual, and of which, under professional standards, we are required to inform you, or transactions for which there is lack of authoritative guidance or consensus.

Significant Audit Adjustments

For purposes of this letter, professional standards define a significant audit adjustment as a proposed correction of the financial statements that, in our judgement, may not have been detected except through our auditing procedures. These adjustments may include those proposed by us but not recorded by Ground Water Oil Cleanup Fund that could potentially cause future financial statements to be materially misstated, even though we have concluded that such adjustments are not material to the current financial statements. We proposed no audit adjustments that could, in our judgement, either individually or in the aggregate, have a significant effect on Ground Water Oil Cleanup Fund financial reporting process.

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

Consultations with Other Independent Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to Ground Water Oil Cleanup Fund's financial statements or a determination of the type of auditors' opinion that may be expressed in those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

Issues Discussed Prior to Retention of Independent Auditors

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Ground Water Cleanup Fund's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

Difficulties Encountered in Performing the Audit

We encountered no significant difficulties in dealing with management in performing our audit.

This report is intended solely for the information and use of the Board of Directors serving as the Audit Committee, management, and other regulatory agencies and is not intended to be and should not be used by anyone other than these specified parties.

Madison Lane Sobety, Fletcher & Co. LLC

Certified Public Accountants
September 7, 2000
Augusta, ME

**GROUND WATER OIL CLEANUP FUND
OF THE STATE OF MAINE DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

FINANCIAL STATEMENTS

For the years ended June 30, 2000 and 1999

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Memorandum of findings and observations	

Macdonald Page Schatz Fletcher

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 statements of cash and fund balance 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, 2000 and 1999, and the related statements of receipts and disbursements and changes in cash balance for the years then ended. 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 the standards applicable to financial audits contained in *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, 2000 and 1999, and the receipts and disbursements and changes in cash balance for the years then ended on the basis of accounting described in Note 2.

In accordance with *Government Auditing Standards*, we have also issued our report dated September 7, 2000 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, regulations, contracts and grants. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be read in conjunction with this report in considering the results of our audit.

Our audits were 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.

Marcus & Page Schatz Fletcher & Co. LLC

Certified Public Accountants
September 7, 2000
Augusta, Maine

GROUND WATER OIL CLEANUP FUND
OF THE STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATEMENTS OF CASH AND FUND BALANCE

June 30, 2000 and 1999

	<u>2000</u>	<u>1999</u>
CASH BALANCE	<u>\$ 2,939,260</u>	<u>\$ 5,945,431</u>
FUND BALANCE	<u>\$ 2,939,260</u>	<u>\$ 5,945,431</u>

See accompanying notes and auditors' report

**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, 2000 and 1999

	<u>2000</u>	<u>1999</u>
RECEIPTS		
Terminal and underground tank fees	\$ 11,367,058	\$ 12,656,893
Environmental fees	6,460	0
Recoveries	82,704	403,600
Deductibles	195,111	334,987
Fines	43,305	95,550
Interest	251,669	415,052
Program transfers	1,046,000	1,941,642
Miscellaneous	<u>60,309</u>	<u>512,026</u>
TOTAL RECEIPTS	\$ 13,052,616	\$ 16,359,750
DISBURSEMENTS	<u>16,058,787</u>	<u>16,157,217</u>
EXCESS (DEFICIENCY) OF RECEIPTS OVER DISBURSEMENTS	\$ (3,006,171)	\$ 202,533
CASH BALANCE, beginning of year	<u>5,945,431</u>	<u>5,742,898</u>
CASH BALANCE, end of year	<u>\$ 2,939,260</u>	<u>\$ 5,945,431</u>

See accompanying notes and auditors' report

**GROUND WATER OIL CLEANUP FUND
OF THE STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

NOTES TO FINANCIAL STATEMENTS

June 30, 2000 and 1999

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.

RECLASSIFICATIONS: Certain amounts from 1999 have been reclassified to permit comparison with 2000.

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 a comprehensive basis of accounting other than generally accepted accounting principles. Under the cash basis of accounting, receipts and the related assets are recognized when received rather than when earned, and expenses are recognized when paid rather than when the obligation is incurred. The cash basis of accounting differs from generally accepted accounting principles primarily because the Fund has not recognized accounts receivable and accounts payable to vendors and their related effects on changes in cash balance in the accompanying financial statements.

NOTE 3 - PROGRAM TRANSFERS

Program transfers for the year ended June 30, 2000 of \$1,046,000, consist of \$46,000 of final loan repayments from the Maine Environmental Protection Fund, and \$1,000,000 transfer from the Finance Authority of Maine administered Underground Storage Tank loan program authorized by the Fund Insurance Review Board. Program transfers for the year ended June 30, 1999 of \$1,941,642, consist of \$1,895,642 return of funds previously administered by the Maine State Housing Authority, and \$46,000 of loan repayments from the Maine Environmental Protection Fund. The funds previously administered by the Maine State Housing Authority, available for loans to homeowners for underground storage tank removal and replacement, have been issued under contractual agreements with the Community Action Program Agencies of Maine under the Aboveground Home Heating Oil Storage Tank Pilot Project.

NOTE 4 – MISCELLANEOUS RECEIPTS

Miscellaneous receipts for the year ended June 30, 1999 of \$512,026 include a Fund Insurance Review Board payment of \$500,000. In November 1998, the Fund Insurance Review Board voted to return unused funds that had previously been paid by Ground Water Oil Cleanup Fund for costs of administration.

**GROUND WATER OIL CLEANUP FUND
OF THE STATE OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION**

SCHEDULES OF DISBURSEMENTS

For the years ended June 30, 2000 and 1999

	2000	1999
DISBURSEMENTS		
Personal services	\$ 2,234,795	\$ 2,139,692
Cleanup	0	8,176,044
Professional fees	6,382,591	708,632
AST pilot project	1,183,199	915,361
Travel	27,258	23,822
Auto expense	(204)	(860)
Utilities	78,564	95,642
Rents	353,076	144,436
Repairs	31,631	9,827
Insurance	0	260
General operating	1,229,279	116,591
Training	3,705	0
Food	320	0
Fuel	550	0
Technology	184,743	0
Clothing	2,317	0
Office supplies	0	11,541
Other supplies	147,488	100,389
Medical supplies	47	0
Late fees	273	0
Grants to public organizations	40,000	0
STACAP	217,442	236,848
Capital other	52,722	23,492
Fee refunds	1,801,183	1,736,824
Transfers to overhead	1,697,407	1,507,440
Transfers to board account	121,458	90,479
Transfers to State Fire Marshall	147,680	0
Transfers to Attorney General	121,264	120,757
	\$ 16,058,787	\$ 16,157,217
TOTAL DISBURSEMENTS		

See accompanying notes and auditors' report

Macdonald Page Schatz Fletcher

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 statements of cash and fund balance, and the related statements of receipts and disbursements and changes in cash balance 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, 2000 and 1999, and have issued our report thereon dated September 7, 2000. We conducted our audits in accordance with generally accepted 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 audits 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 are material weaknesses.

This report is intended solely for the information and use 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.

MacDonald Page Spletz Fletcher & Co LLC

Certified Public Accountants
September 7, 2000
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, 2000

Finding #1: 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 the Spill Site Tracking System (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 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:

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 as a pilot project are expected to be completed in early 2000 with full implementation of the system anticipated by July 1, 2001. In order to address this recommendation and to meet other needs in the Department, the staff are developing a system which will allow more accurate time accounting than currently exists. It is planned for this system to ultimately link with SSTS to track personnel costs on a per spill basis, though this link will require separate system development on the part of the Department. The end result will allow us to more easily monitor accumulated spill or project costs.

Finding #2: CROSS TRAINING EMPLOYEES

The terminal fee system has only one employee trained to operate the system. If this employee was unable to come to work for an extended period, the system is at risk for failure.

Recommendation:

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

Auditee Response:

As was stated in the response to this Finding in previous audits, staff resources remain insufficient to carry out all of the desired tasks. However, the financial management section is gradually strengthening its resources and reference materials (i.e. user manuals) in order to allow for performance of such critical functions as the fee system during times of employee absence. We expect significant improvement in this area in the near term.

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, 2000

Finding #3: FEE REFUNDS

Title 38 MRSA Section 569-A Subsection 7 states:

“Any person who paid a fee under subsection 5, paragraph A on petroleum products that were exported from this State must be reimbursed by the department upon presentation of documentation of that payment and transfer.”

The Department currently reimburses all refund requests for exported petroleum products. The question of the legitimacy of these requests has been raised for situations when the requests are for product that was stored in Maine (outside a terminal facility) prior to sale to the end user. We are also concerned that a terminal may request a refund for product shipped out of state and the out-of-state retailer may also request the refund.

Recommendation:

We recommend that the Department determine what type of refund requests they are receiving and get legislative clarification if the refunds do not appear to reflect the original intent of the law. We also recommend that the Department determine which party may claim refunds.

Auditee response:

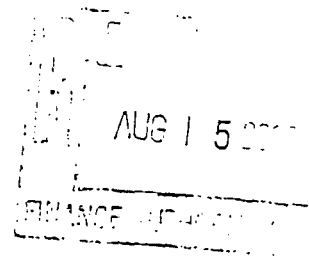
The Department is undertaking a review of the refund program. Legislation may be submitted if it appears warranted.

EXHIBIT C

Legislative Agenda 2000

2000-2001 REGULATORY AGENDA

August 14, 2000



AGENCY UMBRELLA-UNIT NUMBER: 90-564

AGENCY NAME: Fund Insurance Review Board

CONTACT PERSON: Veronica Costa, Finance Authority of Maine, 83 Western Avenue, P.O. Box 949, Augusta, Maine 04332--0949. Tel: (207) 623-3263.

EMERGENCY RULES ADOPTED SINCE LAST REGULATORY AGENDA: None

EXPECTED 2000-2001 RULE-MAKING ACTIVITY:

CHAPTER 3: Appeals Procedures

STATUTORY AUTHORITY: 38 M.R.S.A. § 568-A(3-A)

PURPOSE: The Board may make amendments to simplify and/or clarify its procedural rules.

ANTICIPATED SCHEDULE: The Board routinely reviews its appeals procedures and at this time has no reason to think that amendments to the rule will be necessary, but the Board wishes to put the Joint Standing Committee on notice that it may wish to amend the rule prior to October 1, 2001.

AFFECTED PARTIES: Applicants aggrieved by a decision of the Commissioner of the Department of Environmental Protection or the State Fire Marshal who appeal their decisions to the Fund Insurance Review Board.

CHAPTER 4: Oil Import Fees

STATUTORY AUTHORITY: 38 M.R.S.A. §§ 568-B(2)(D) and 569-A(5)(E)

PURPOSE: If the Ground Water Oil Clean-Up Fund is insufficiently funded the Board may increase oil import fees.

ANTICIPATED SCHEDULE: At this time it is not known whether an amendment to the rule will be necessary, but the Board wishes to put the Joint Standing Committee on notice that procedures or funding levels could change which could require the Board to change the fees prior to October 1, 2001.

AFFECTED PARTIES: Oil terminal facility licensees and persons required to register with the Commissioner of the Department of Environmental Protection who first transport oil into the state.

EXHIBIT D

Wells Waste Oil Clean-up Fund Report

WELLS WASTE OIL PROGRAM STATISTICS

Wells Waste Oil Fund Balances (According to G/L as of 08/31/00) (Exhibit A)

Grant Fund Balance:	\$1,080,763.07
Loan Fund Balance:	\$4,000,000.00
Total Fund Balance:	\$5,080,763.07

Grant Fund Balance (According to Database as of 10/26/00)

Fund Amount Beginning Balance:	\$3,100,000.00
Total Round I Disbursements (Exhibit B):	<u>626,400.00</u>
Balance After Round I:	\$2,473,600.00
Total Round II Disbursements (Exhibit B):	<u>1,394,436.93</u>
Balance After Round II (according to database):	\$1,079,163.07
 Add-Back: Voided Check No. 50562 ¹	 <u>1,600.00</u>
	\$1,080,763.07
 Average Grant Size (Round I):	 \$1,749.72
Average Grant Size (Round II):	\$9,358.64
(Grant Amounts for Round II varied from a low of \$214.53 to a high of \$162,969.11)	
 Total Payees (Rounds I and II-Exhibit C):	 358
Number of Multiple Site Applications (Exhibit D):	124
(Totaling 40 PRP's)	

Loan Fund Balance	\$4,000,000.00
Less One Loan Disbursed (10/24/00):	<u>(5,269.00)</u>
Total Fund Balance:	\$3,994,731.00

Grant Fund Information

Round I Information

Mass Mailing	12/29/00
Round I Applications Due Back by:	02/01/00
Checks for Round I Due Out by:	03/01/00
Round II Applications Due Back by:	03/01/00
Checks for Round II Due Out by:	04/01/00

¹See second paragraph listed under "Other Information" on page 3.

Total Number of Applications Sent Out First Mailing:	1,890
Other Requests for Applications	<u>21</u>
Total Applications	1,911
Total Postal Returns	1,100

Public Notice Mailing Dates:

January 1, 2000
 January 8 and 9, 2000
 January 15 and 16, 2000
 January 22 and 23, 2000

Newspapers the Public Notice Ran in on all four dates above:

Portland Press Herald
 Bangor Daily News
 Lewiston Sun Journal
 Central Maine Newspapers (KJ and Waterville Sent.)

On March 24,2000, the Governor signed an extension for Round I. As a result, a new mass mailing was conducted for this round and Round II dates were extended as follows:

Round I Extension

Mass Mailing to New/Corrected Addresses	
Round I Applications Due Back by:	05/15/00
Checks for Round I Due Out by:	05/31/00
Round II Applications Due Back by:	06/15/00
Checks for Round II Due Out by:	06/30/00

Total Number of Applications Sent Out (Exhibit E):	296
Total Postal Returns:	26

After combining AEC's (American Environmental Consulting) database and Fame's, a total of 296 new addresses were found (these addresses included both new addresses for existing PRP's and new PRP's found since the first Round I mailing).

Public Notice Mailing Date:

April 15, 2000

Newspapers the Public Notice Ran in on the date above:

Portland Press Herald
 Bangor Daily News

Lewiston Sun Journal
Central Maine Newspapers (KJ and Waterville Sent.)

This notice was placed in the LOCAL section of each newspaper or a flag was placed in this section with reference to the program found in the PUBLIC NOTICE section of each newspaper. We felt the notice would hit a broader population if the notice appeared in this section.

Totals for Round I and Round I Extension:

Total Applications Received (Exhibit C):	358
Total Payees (Exhibit C):	358

Round II Information

Total Applications Received (Exhibit C):	358
(To be eligible for Round II, a PRP had to participate in Round I)	

Total Payees (Exhibit C):	150
Total Non-Payees (Exhibit C)*:	208

*Non-Payees are PRP's whose Round I grant exceeded the 38% calculated for the Round II program. Also includes four applications received for Round II that did not fully pay their liability and therefore were not eligible to be entered into the Round II process.

Other Information

Two applications received were incomplete. Correspondence was sent to each with no responses.

One application for Round I grant only was received. A check was cut and mailed. The check was returned in the mail due to insufficient address. I attempted contacting the PRP numerous times to no avail. The check was finally voided.

Loan Fund Information

One loan was given out on October 25, 2000 in the amount of \$5,269.00 to Knox Bros., Inc. This was the only loan disbursed with this program.