

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



February 11, 2003

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

Representative Theodore Koffman, Chair  
Joint Standing Committee on Natural Resources  
2 State House Station  
Augusta, ME 04333-0002

Dear Senator Martin, Representative Koffman and Honorable Members of the Joint Standing Committee on Natural Resources:

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, 2002.

If you have any questions you may contact either Veronica Costa of the Finance Authority of Maine at 623-3263 or me at the Coastal Community Action Program at 596-0361.

Sincerely,

*Michael Bonzagni*  
Michael Bonzagni, Chair *1/c*  
Fund Insurance Review Board

Enclosure

S:\BUSDEV\FIRB\Reports & Contracts\Annual Report Cover Letter.doc

Fund Insurance Review Board  
% Finance Authority of Maine  
83 Western Avenue, Post Office Box 949, Augusta, ME 04332-0949  
TEL (207) 623-3263 FAX (207) 623-0095 TDD (207) 626-2717



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

**February 15, 2003**



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 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 for the period beginning January 1, 2002 and ending December 31, 2002, with the exception of activities related to the Plymouth Waste Oil Clean-up Loan Program. The Plymouth Waste Oil Clean-up Fund Report, included as **Exhibit D**, highlights the Board and FAME's experience in administering this Program through December 31, 2002. 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 income and disbursements from the Ground Water Clean-up Fund.

## Part I

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

Michael Bonzagni, Chair *	Patricia W. Aho, Esq.
Jamie Py	Robert Bender, Sr. *
John Babb, Sr. (resigned)	Sarah Walton, Esq. *
Donald C. Almy * (resigned)	Steven Dodge, SFMO
Tina Schneider, Esq. * (resigned)	David Lennett, DEP
Dirk Brunner *	

\*Appeals panel member

### APPEALS ACTIVITIES:

During the calendar year ending December 31, 2002, the Fund Insurance Review Board processed a total of five appeals, four of which were heard by the Appeals Panel of the Fund Insurance Review Board. In three cases the Commissioner's/State Fire Marshal's decisions were upheld. One appeal was withdrawn by the appellant. In carrying out its responsibilities, the full Board held four 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 2002 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 October 2002, the Board engaged the accounting services of MacDonald Page Schatz Fletcher & Associates to audit the Fund for the fiscal year ending June 30, 2002. This was the sixth audit of the Fund. The audit is included as **Exhibit B**.

### REGULATORY CHANGE

The Board filed its Regulatory Agenda on July 11, 2002. A copy is attached as **Exhibit C**. Changes to Chapter 3 of the Rule were initiated.

**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 3<sup>rd</sup> party damage 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) 2002 (July 1, 2001 – June 30, 2002). A balance of \$ 4,698,397 was carried forward from FY 2001. Total net income for FY 2002 was \$ 20,698,892, including the carry forward balance. Expenditures totaled \$ 18,016,654.

During the fiscal year 2002, there was a significant increase in net revenue of \$6,063,671 and an increase in expenditures of \$5,140,459 when compared to the 2001 fiscal year. The surcharge imposed when the balance in the Fund remains below \$5 million dollars for three consecutive months was activated in May, 2000, and remains in effect. During FY 2002, the surcharge was in effect for the entire 12-month period. In FY 2002 fee refunds to petroleum distributors for oil not stored in Maine totaled \$1,814,698. This represents a decrease of approximately \$194,634 when compared to FY 2001. The increase in revenue during FY2002 was attributable to transfers from FAME and an increase in the surcharge amount, which became effective in January, 2002. The increase in expenditures is largely attributable to additional cleanup activity to address the backlog of sites on the cleanup priority list.

The available cash balance in the Fund at the end of the fiscal year was \$2,682,328, while the net Fund availability was \$431,025.

During FY 2002 one-time sources of revenue included the return of \$1,500,000 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, 2001.

**TABLE 1**

**STATEMENT OF CASH POSITION  
GROUNDWATER OIL CLEAN-UP FUND  
AT JUNE 30, 2002**

<b>BALANCE FORWARD (July 1, 2001)</b>	<b>\$ 4,698,397.21</b>
<b>INCOME</b>	<b>\$ 17,815,284.57</b>
Minus Fee Refunds	<b>-\$ 1,814,698.82</b>
<b>NET INCOME</b>	<b>\$ 20,698,982.96</b>
<b>EXPENDITURES</b>	
Personal Services	<b>\$ 2,878,267.73</b>
All Other	<b>\$ 12,983,619.94</b>
Capital	<b>\$ 229,658.56</b>
Indirect Cost Transfers	<b>\$ 1,599,268.70</b>
Other Transfers (Excluding FAME)	<b>\$ 325,839.30</b>
FAME Cash Payments (FY 2002)	<b>\$ -0-</b>
<b>NET EXPENDITURES</b>	<b>\$ 18,016,654.23</b>
<b>CASH BALANCE (6/30/2002)</b>	<b>\$ 2,682,328.73</b>
<b>ENCUMBRANCES (6/30/2002)</b>	<b>\$ 2,032,695.59</b>
<b>INDIRECT COST OBLIGATION (6/30/2002) (untaken)</b>	<b>\$ 218,608.04</b>
<b>NET FUND AVAILABILITY (6/30/2002)</b>	<b>\$ 431,025.10</b>

**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 - June 30, 2002)	561
Total Eligible	----
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2002	217
Total Ineligible	58
Total Pending	1

**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. Conditional deductibles are assessed in accordance with statute based on a review of applicable compliance information. (See 38 M.R.S.A., § 568-A(2)).**

From July 1, 2001 through June 30, 2002, the Department received 9 applications for the coverage of clean up costs. There are no pending applications. The Department received 3 more applications than it did in FY 2001 (July 1, 2000 – June 30, 2001). The number of applications from underground oil storage facilities increased for the second consecutive year. Discharges that are discovered from bare steel tanks or piping after October 1, 1998 are not covered by the Fund.

**TABLE 3**

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

Total Received (June 16, 1993 - June 30, 2002)	Approximately 1,236
Total Eligible	1,194
Total Ineligible	42

During FY 02, 272 eligible applications were forwarded to the DEP from the office of State Fire Marshal. This represents an increase of 134 applicants when compared to the number of applications (138) referred to the department from the Office of State Fire Marshall in FY 2001. The increase in the number of applicants for the coverage of eligible clean up costs from aboveground storage tanks may be attributed to two factors: 1) the number of releases from above ground tanks resulting from snow and ice falling from roofs and breaking oil lines and filters increased due to the

more severe winter weather conditions in calendar year 2001 and; 2) the Department of Environmental Protection initiated reimbursement actions for clean ups that were not the subject of an application, resulting in the receipt of many belated filings for coverage.

**TABLE 4**

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

Total Received	1797
Total Eligible	1696
Total Ineligible	100
Total Pending	1

**D. Administration of Third Party Claims.**

The Department of Environmental Protection currently is processing 33 claims for third party damages against the Ground Water Oil Clean up Fund.

During fiscal year 2002, the Department completed processing of 14 claims filed against the Ground Water Oil Clean up Fund and awarded a total of \$81,075 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. Cash settlements reflect compensation for personal property, real property, operation and maintenance subsidies for those cases where a 'point of entry' treatment system is the final resolution, 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 fiscal year 2002, 5 claims were dismissed, withdrawn or settled without a cash award. Of the 9 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 \$9,008 average cash award per claim processed. The average cash award to third party claimants for calendar year 2001 was \$6,445. In comparison, the average cash award during calendar year 1997 was \$19,695, in calendar year 1998 it was \$29,550, in calendar year 1999 it was \$22,762, and in 2000 it was \$6,426.

**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.

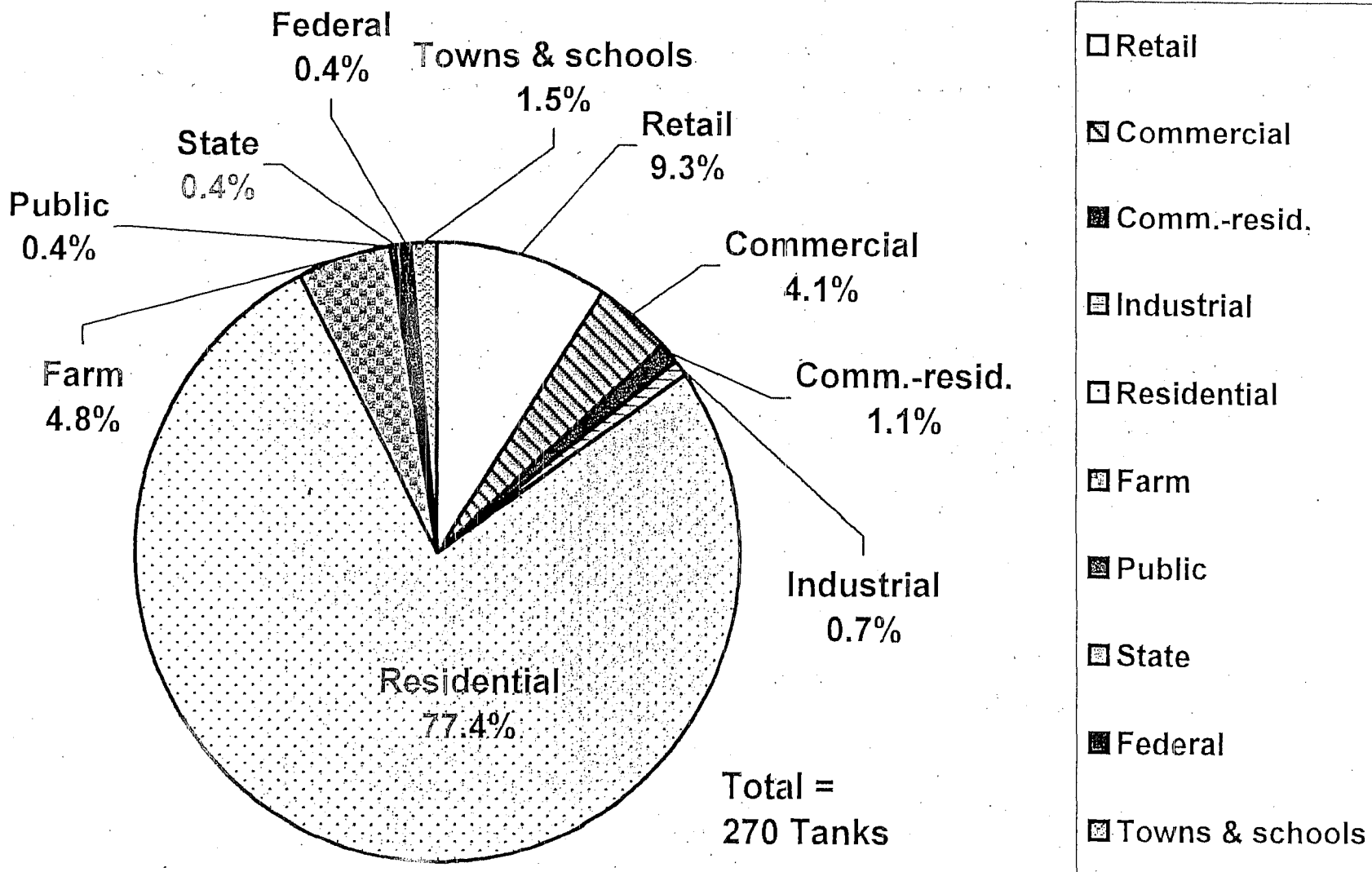
The table on page 6 illustrates the record of compliance as of December 31, 2002 with the removal schedule mandated in statute. All non-conforming facilities should have been removed or otherwise properly abandoned by the final deadline of October 1, 1998.

Approximately 34,869 registered tanks were scheduled for removal through October 1, 1998. About 36,732 tanks have been properly removed or abandoned in place. From December 31, 2001 to December 30, 2002 there were 82 additional nonconforming tanks registered, a reduction of 4 from the previous year. Each year numerous unregistered bare steel tanks are identified and subsequently registered. As of December 31, 2002 there were approximately 270 registered tanks remaining to be properly removed or abandoned in place. Residential locations account for 209 of these non-compliant tanks. The removal of 99.2% of bare steel and other non-conforming underground oil storage facilities is one of the best compliance rates in the United States.

The Department of Environmental Protection continues to monitor the efforts of owners of facilities that have not properly abandoned non-conforming facilities. Staff have targeted facilities used for the storage of motor fuels and located in sensitive geologic areas for enforcement action during fiscal year 2003. Enforcement efforts combined with low interest loans and/or grants from the Finance Authority of Maine and Community Action Programs are used to encourage the removal of the <1% of remaining non-complaint facilities.

Currently there are a total of approximately 5,508 underground oil storage tanks registered in the State of Maine. This includes the 270 tanks that still need to complete the abandonment/removal process, of which there are approximately 99 tank owners that have had the tanks removed but the owners have failed to have a site assessment performed to determine if clean up actions are necessary.

# Remaining Bare Steel Tanks by Category (December 20, 2002)



## Fund Adequacy

While increased revenues of over \$6,000,000 are reported for fiscal year 2002, \$1,500,000 of that total was the result of a one-time transfer of money back to the Fund from the revolving loan fund administered by the Finance Authority of Maine. In the coming fiscal years, the full effect of the increase in the surcharge amount should help the financial integrity of the Fund.

At the present time, it appears that the combination of this surcharge increase and periodic transfers from FAME will be sufficient to support Department efforts to address the backlog of sites awaiting cleanup, as proposed by the Department in its December 2000 report to the Legislature. However, as indicated by the small net fund availability at the close of the fiscal year, revenue income and expenditures must be carefully monitored to ensure they remain in alignment. Prioritizing remedial sites and performing clean up to concentrations commensurate with the degree of risk will remain an important function of the Department of Environmental Protection.

The increase in the number of applications for Fund coverage when compared to fiscal year 2001 is cause for concern. Prompt reporting of evidence of a possible leak and compliance with the operation and maintenance of spill and overfill prevention, leak detection and cathodic protection equipment must be encouraged and overall compliance rates improved.

Currently the department is implementing a multi-tasked approach to help prevent releases and reduce expenditures. These initiatives are summarized below:

1. Third party inspection: Beginning July 1, 2003 annual inspection forms must be filed with the department for all underground oil storage tanks. The annual inspection form has been "re-designed" to enhance clarity and comprehension. A contract has been entered for the research and production of test questions that will be used to certify third party inspection. This effort implements legislation enacted in the spring of 2001.
2. Education/Outreach: A contract for the production of "Making Sense of Underground Oil Storage Tank Rules: An Operators Guide", has been entered and work is under way. The lay person guide is intended to enhance the understanding of tank owners and operators with spill, overfill, cathodic protection and leak detection equipment and procedures, and the departments rules (Chapter 691).
3. Increased field presence: A strategy has been implemented to increase the presence of Department inspectors by increasing the number of compliance inspections across the state. In a twelve-month period, over 500 facilities were recently inspected.



4. Expedited Enforcement: A strategy is being created to expedite the issuance of an enforcement response on site for certain issues of non-compliance determined during inspections. The strategy consists largely of developing an agreement with reduced penalties when compliance is achieved promptly on an agreed upon schedule (generally 30 days). Issues that cannot be resolved promptly will be the focus of more traditional enforcement.
5. AST/UST Replacement: The Department continued its contractual relationship with Maine's eleven community action agencies for the fourth consecutive year. The Washington Hancock Community Action Agency again served as the administrative coordinator for the Aboveground Storage Tank (AST) and Piping Replacement Program and the Underground Tank Removal Program.

In FY 2002, 863 non-conforming ASTs were removed and replaced at a total cost of \$742,662.00. Also, non-conforming (buried) fuel supply piping was replaced for 44 households at a cost of \$6,787.00. Additional expenditures totaling \$88,183.00 were spent removing 23 non-compliant underground storage tanks at residences.

6. SPCC Program: As part of the implementation of the SPCC program the Department is developing education and outreach materials to aid facility owners and operators in complying with this law. Recently the Department secured the services of the Jacques Whitford Company of Portland to develop model SPCC plans and provide statewide training in the spring of 2003.

The Department has also hired Stroudwater Associates to update the UST database and work with the Office of State Fire Marshal and the Maine Emergency Management Agency to link the data of all three agencies.

The Department is in the process of hiring a staff person to administer the SPCC program. A high priority will be to develop a strong education and outreach program, including on-call regulatory/technical assistance, technical assistance inspections and maintenance of the AST database.

7. Residential AST Outreach: The Department contracted with Kathy Guerin of Bowdoinham to develop an outreach strategy concerning the February 2003 deadline for the upgrade of home heating oil tanks located outside. Two 30 second television ads were created using veteran Oil and Hazardous Materials Specialist, Tom Varney, as the spokesman.

A paid "summer" ad served as an early reminder to "fix your tank while the weather is nice" and ran in June, 2002, followed by a newspaper ad in all seven of the statewide daily newspapers.

In September 2002 another print ad was run in the home improvement sections of the seven daily newspapers.

Finally a paid "winter" television ad was run in November, 2002. Free public service announcements will run through January 2003.

The Department also maintains a website page on this issue. It includes a checklist, excerpts from the television ad, a listing of suppliers of filter protectors, a link to the Oil and Solid Fuel Board rules and other valuable information.

On May 15, 2001, the Department submitted a report about the insurance program to the Joint Standing Committee on Natural Resources. That report was mandated by Chapter 714 of the Public Laws of 1999 and contained detailed findings and recommendations regarding the insurance coverage provided by the Ground Water Oil Clean – up Fund. That report concluded that no alternate mechanism of financial assurance was available that offered the same coverages and services. Therefore, the Department will be introducing a proposal for legislative review in the upcoming session that will extend the insurance program through December 31, 2010. Without an extension, the program is scheduled to end on December 31, 2005.



**EXHIBIT A**

**Case-by-Case Analysis of Appeals for 2002**



**FUND INSURANCE REVIEW BOARD - 2002 APPEALS ANALYSIS**

<i>APPELLANT</i>	<i>DATE APPEAL FILED</i>	<i>DATE CHAPTER 3 SENT TO APPELLANT</i>	<i>DEP/SFMO POSITION STATEMENT DATE</i>	<i>DATE HEARING SCHEDULED</i>	<i>CONTINUANCE DATE</i>	<i>REASONS FOR CONTINUANCE</i>	<i>DATE APPEAL HEARD</i>	<i>OUTCOME</i>
Ryder Truck Rental	10/19/01	10/23/01	--	01/08/02	--	--	--	Withdrawn by Appellant (1/7/02)
Wilhelm Reich Infant Trust (The)	10/30/01	11/09/01	--	01/08/02	--	--	01/08/02	State Fire Marshal's decision upheld
Thompson Oil Company	11/28/01	11/29/01	--	01/08/02	--	--	01/08/02	State Fire Marshal's decision upheld
Janice M. Crabtree (Estate of)	01/25/02	01/25/02	--	04/09/02	--	--	04/09/02	State Fire Marshal's decision overturned
Charles Louka - Katahdin Christian Comm. Church	04/08/02	05/06/02	--	07/09/02	--	--	07/09/02	State Fire Marshal's decision upheld



**EXHIBIT B**

**Audit of Fund for Fiscal Year Ending June 30, 2002**





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

**FINANCIAL REPORT**

June 30, 2002 and 2001

**CONTENTS**

Independent auditors' report

Statements of cash and fund balance

Exhibit A

Statements of receipts and disbursements and  
changes in cash balance

Exhibit B

Notes to the statements of cash and fund balance and  
receipts and disbursements and changes in cash balance

Schedules of disbursements

Schedule 1

Report on compliance and on internal control over  
financial reporting based on an audit of financial  
statements performed in accordance with  
*Government Auditing Standards*

Memorandum of findings and observations

# Macdonald Page Schatz Fletcher

Chartered Accountants and 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 statements of cash and fund balance of the Ground Water Oil Cleanup Fund of the State of Maine Department of Environmental Protection as of June 30, 2002 and 2001, and the related statements of receipts and disbursements and changes in cash balance for the years then ended. The statements of cash and fund balance and receipts and disbursements and changes in cash balance are the responsibility of the Fund's management. Our responsibility is to express an opinion on the statements of cash and fund balance and receipts and disbursements and changes in cash balance based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statements of cash and fund balance and receipts and disbursements and changes in cash balance. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the statements of cash and fund balance and receipts and disbursements and changes in cash balance. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 1, the accompanying statements of cash and fund balance and receipts and disbursements and changes in cash balance 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, the accompanying statements of cash and fund balance and receipts and disbursements and changes in cash balance were prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted for governmental entities in the United States of America.

In our opinion, the statements of cash and fund balance and receipts and disbursements and changes in cash balance 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, 2002 and 2001, and the receipts and disbursements and changes in cash balance for the years then ended on the basis of accounting described in Note 2.

30 Long Creek Drive • South Portland, ME 04106-2437 • 207-774-5701 • FAX: 207-774-7835  
277 Water Street • P.O. Box 1071 • Augusta, ME 04332-1071 • 207-622-4766 • FAX: 207-622-6545  
87 Elm Street • Camden, ME 03843-1959 • 207-236-5455 • FAX: 207-236-8672

[www.macpage.com](http://www.macpage.com) • [cpa@macpage.com](mailto:cpa@macpage.com)

*An Independently Owned Member of the McGladrey Network*

In accordance with *Government Auditing Standards*, we have also issued our report dated November 21, 2002 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance and, in our opinion, is fairly stated in all material respects in relation to the statements of cash and fund balance and receipts and disbursements and changes in cash balance taken as a whole.

This report is intended solely for the information and use of the Maine Department of Environmental Protection, the Fund Insurance Review Board, and the Legislature of the State of Maine, and is not intended to be and should not be used by anyone other than these specified parties.

*Macdonald Page Schatz Fletcher & Co. LLC*

November 21, 2002  
Augusta, Maine

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

## STATEMENTS OF CASH AND FUND BALANCE

June 30, 2002 and 2001

	<u>2002</u>	<u>2001</u>
CASH BALANCE	<u>\$ 2,682,328</u>	<u>\$ 4,698,397</u>
FUND BALANCE		
Reserve for Encumbrances	\$ 2,251,304	\$ 1,471,721
Unreserved	431,024	3,226,676
TOTAL FUND BALANCE	<u>\$ 2,682,328</u>	<u>\$ 4,698,397</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, 2002 and 2001

	<u>2002</u>	<u>2001</u>
RECEIPTS		
Terminal and underground tank fees	\$ 15,942,394	\$ 14,193,512
Environmental fees	8,800	2,300
Recoveries	105,194	41,676
Deductibles	119,828	97,999
Fines	17,294	14,515
Interest	119,537	293,628
Program transfers	1,500,000	2,000,000
Miscellaneous	<u>2,237</u>	<u>837</u>
TOTAL RECEIPTS	\$ 17,815,284	\$ 16,644,467
DISBURSEMENTS	<u>19,831,353</u>	<u>14,885,330</u>
EXCESS (DEFICIENCY) OF RECEIPTS OVER DISBURSEMENTS	\$ (2,016,069)	\$ 1,759,137
CASH BALANCE, beginning of year	<u>4,698,397</u>	<u>2,939,260</u>
CASH BALANCE, end of year	<u><u>\$ 2,682,328</u></u>	<u><u>\$ 4,698,397</u></u>

See accompanying notes and auditors' report

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

NOTES TO STATEMENTS OF CASH AND FUND BALANCE  
AND RECEIPTS AND DISBURSEMENTS AND CHANGES IN CASH BALANCE

June 30, 2002 and 2001

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. The statements of cash and fund balance and receipts and disbursements and changes in cash balance 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.

**ENCUMBRANCES** - For the years ended June 30, 2002 and 2001, the Ground Water Oil Cleanup Fund had outstanding commitments of \$2,251,304 and \$1,471,721, respectively.

NOTE 2 - BASIS OF PRESENTATION

The statements of cash and fund balance and receipts and disbursements and changes in cash balance of the Ground Water Oil Cleanup Fund are presented on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. 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 accounting principles generally accepted in the United States of America 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance.

The statements of cash and fund balance and receipts and disbursements and changes in cash balance of the Ground Water Oil Cleanup Fund do not include all report presentations required under Governmental Accounting Standards Board Statement #34.

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

**NOTES TO STATEMENTS OF CASH AND FUND BALANCE  
AND RECEIPTS AND DISBURSEMENTS AND CHANGES IN CASH BALANCE**

June 30, 2002 and 2001

**NOTE 3 – PROGRAM TRANSFERS**

Program transfers for the year ended June 30, 2002 and June 30, 2001 of \$1,500,000 and \$2,000,000, respectively, consist of a transfer from the Finance Authority of Maine administered Underground Storage Tank loan program authorized by the Fund Insurance Review Board.

**NOTE 4 – RETIREMENT PLAN**

The employees paid through the Ground Water Oil Cleanup Fund are eligible to participate in the Maine State Retirement System. The Maine State Retirement System is a contributory multi-employer defined benefit pension plan. The rate charged to the Fund is determined per employee at the employee's hire date as well as position level. The amount is charged to the Fund as compensation is paid.

**NOTE 5 – COMMITMENTS**

The Ground Water Oil Cleanup Fund is committed to providing funds for water treatment facilities within three Maine towns. Management estimates their portion of the facilities will cost \$7,000,000. As of November 21, 2002, the Ground Water Oil Cleanup Fund has spent approximately \$6,927,741 towards the facilities.

The Ground Water Oil Cleanup Fund is committed to providing funds to subsidize the operational expenses for the new water treatment facility at the Village of Tenants Harbor. Management estimates their portion of these expenses will cost \$900,000, to be paid for in equal quarterly payments for two-years and beginning in late fiscal year 2003. As of November 21, 2002, the Ground Water Oil Cleanup Fund has spent nothing towards these estimated expenses.

The Ground Water Oil Cleanup Fund is committed to providing funds for the cleanup of a spill in Aurora, Maine. Management estimates their portion of the spill costs will be \$320,000. As of November 21, 2002, the Ground Water Oil Cleanup Fund has spent nothing towards these estimated expenses.

The Ground Water Oil Cleanup Fund is committed to providing funds for the creation of a ground water database to be shared with the Fire Marshall's and the Maine Emergency Management Agency. Management estimates their portion of these expenses will be \$720,000, to be paid in two annual payments beginning in fiscal year 2003. As of November 21, 2002, the Ground Water Oil Cleanup Fund has spent nothing towards these estimated expenses.



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

SCHEDULES OF DISBURSEMENTS

For the years ended June 30, 2002 and 2001

	2002	2001
DISBURSEMENTS		
Personal services	\$ 2,865,086	\$ 2,409,584
Professional fees	7,229,510	5,048,689
AST pilot project	956,165	1,071,689
Travel	38,761	32,408
Auto expense	(37)	6,243
Utilities	56,181	67,762
Rents	338,584	326,283
Repairs	48,163	10,626
Insurance	457	205
General operating	2,418,136	1,628,180
Training	21,758	16,699
Food	429	837
Fuel	636	1,266
Technology	177,850	169,437
Clothing	3,646	3,446
Office supplies	146,729	131,896
Late fees	1,323	269
Grants to public organizations	1,277,718	28,423
STACAP	263,937	102,153
Capital other	229,659	86,825
Fee refunds	1,814,699	2,009,333
Transfers to overhead	1,599,269	1,410,873
Transfers to board account	169,656	164,873
Transfers to State Fire Marshall	84,073	76,430
Transfers to Attorney General	88,965	80,901
	\$ 19,831,353	\$ 14,885,330
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

## 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 year ended June 30, 2002, and have issued our report thereon dated November 21, 2001. We conducted our audit in accordance with auditing standards generally accepted in the United States of America, 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance. 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 statements of cash and fund balance and receipts and disbursements and changes in cash balance 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.

30 Long Creek Drive • South Portland, ME 04106-2437 • 207-774-5701 • FAX: 207-774-7835  
227 Water Street • P.O. Box 1071 • Augusta, ME 04332-1071 • 207-622-4766 • FAX: 207-622-6545  
87 Elm Street • Camden, ME 04843-1959 • 207-236-8443 • FAX: 207-236-8672

www.macpage.com • cpa@macpage.com

An Independently Owned Member of the McGladrey Network

This report is intended solely for the information and use of the Fund Insurance Review Board, the State of Maine Department of Environmental Protection, and the Legislature of the State of Maine, and is not intended to be and should not be used by anyone other than these specified parties.

*Macdonald Page Solatz Fletcher & Co. Inc.*

November 21, 2002  
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, 2002

**Finding #1: REPAYMENTS**

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".*

Title 38 MRSA Section 568-A Subsection 2 states:

*"Applicants eligible for coverage by the fund under subsection 1 shall pay on a per occurrence basis the applicable standard deductible amount..."*

It appears that there is no formal accounting policy or system in place that can identify, and more importantly, collect the funds that have been spent on uninsured spill claims where there is a known responsible party, or where the total expenditures have exceeded the one million dollar limit on insured claims.

**Recommendation:**

We recommend that management implement a formal accounts receivable system that will be able to adequately identify and collect on amounts due on statute defined recoverable expenditures. Additionally, prompt and accurate reconciliation of receivable accounts should be made on a monthly basis, if practical, by someone who has no other duties in the areas of initiating or recording cash transactions. This reconciliation should be submitted for management's review. Management should then satisfy itself as to the nature of any unusual reconciling items before authorizing adjustments to correct the balances. These adjustments should be thoroughly documented and promptly made so that it will not be necessary to carry them forward to the next month reconciliation.

**Auditee response:**

The Department agrees that accounting system upgrades would improve the collection of recoverable expenditures. Outside services for design of a billing system to link our various programs will likely be necessary. Regardless of the solutions, it is anticipated that the above recommended separation of function can be accommodated and management review on a regular basis will occur.

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, 2002

**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 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:**

Clean-up expenditures approaching \$1,000,000 per site are extremely rare; therefore it is highly unlikely a significant loss of revenue has been experienced for clean-ups exceeding that amount. Nevertheless, with the advent of the new state electronic time accounting system, the Department is now in a position to record staff time in an efficient manner. Protocols for appropriate recording and tracking of personnel time and costs are under discussion. The billing system mentioned in the previous finding, once developed, should allow us to more easily monitor accumulated personnel and clean-up costs to improve our internal operations and simplify the billing process.

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, 2002

**Finding #3: LATE FEE ASSESSMENTS**

Title 38 MRSA Section 569-A Subsection 5-A states:

*"Licenses and registrants who fail to pay by that date shall pay an additional amount equal to 10% of the amount assessed under subsection 5."*

Instances were found where reports were filed late, but some of the payers had yet to be assessed a late fee after several months. The purpose of the legislated fee was to discourage inconsistent reporting. Late fees should be assessed to all payers unless the Department Manager allows a special exemption.

**Recommendation:**

We recommend that management implement a policy of assessing late fees as soon as reports are received.

**Auditee Response:**

A practice to assess late fees when warranted as soon as monthly reports are received exists and is followed. Some of the situations of late reports, which were identified to the auditor, consist of reporting errors in addition to late reporting. These were being addressed individually as time allowed. The late fee assessment practice will continue to be followed on a monthly basis.



**EXHIBIT C**

**Regulatory Agenda 2002**





## 2002-2003 REGULATORY AGENDA

July 11, 2002

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 2002-2003 RULE-MAKING ACTIVITY:

CHAPTER 3: Appeals Procedures

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

PURPOSE: This rule establishes the procedures regarding appeals before the Board's Appeals Panel.

ANTICIPATED SCHEDULE: The Board is reviewing its appeal procedures to ensure that they are clear and consistent with the Administrative Procedure Act and as a result, it may wish to amend the rule prior to October 1, 2003.

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.

CONSENSUS-BASED RULE DEVELOPMENT: not contemplated

CHAPTER 4: Oil Import Fees

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

PURPOSE: Chapter 4 establishes the amount of additional oil import fees needed when the balance of the Ground Water Oil Clean-up Fund is \$5,000,000 or less and the mechanism for assessing the additional fee as well as for terminating its assessment once the Fund balance is restored to the specified level.

ANTICIPATED SCHEDULE: At this time the Board has no reason to anticipate that it will propose amendments to the rule, but it continues to monitor the balance of the Fund and the imposition of the additional fees and wishes to put the Joint Standing Committee on notice that it may wish to amend the rule prior to October 1, 2003.

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.

CONSENSUS-BASED RULE DEVELOPMENT: not contemplated

CHAPTER 5: Documentation Requirements for Claims Submitted by Owners of Aboveground Oil Storage Facilities

STATUTORY AUTHORITY: 38 M.R.S.A. § 568-A(1)(H)

PURPOSE: The rule defines the documentation requirements for claims submitted to the State Fire Marshal for coverage by the Ground Water Oil Clean-Up Fund by owners of aboveground oil storage facilities.

ANTICIPATED SCHEDULE: At this time the Board does not anticipate that an amendment 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, 2003.

AFFECTED PARTIES: Owners and operators of aboveground oil storage facilities who apply for coverage by the Ground Water Oil Clean-Up Fund.

CONSENSUS-BASED RULE DEVELOPMENT: not contemplated

CHAPTER 6: Standards to Determine Ability to Pay Deductible

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

PURPOSE: The rule establishes standards for determining whether an applicant is unable to pay the deductible for a personal residence.

ANTICIPATED SCHEDULE: At this time the Board does not anticipate that an amendment 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, 2003.

AFFECTED PARTIES: Owners of aboveground and/or underground oil storage facilities at their personal residences who apply for coverage from the Ground Water Oil Clean-Up Fund.

CONSENSUS-BASED RULE DEVELOPMENT: not contemplated

**EXHIBIT D**

**Plymouth Waste Oil Clean-up Loan Program Report**



WELLS AND PLYMOUTH WASTE OIL LOAN PROGRAM

**Beginning Loan Fund Balance:** \$5,822,246.05\*

\*Includes beginning balance from Plymouth Program,  
plus investments earnings and transfer from Wells Waste Program.

**Activity for Loan Ledger as of 12/31/02:**

Total Funds Disbursed: \$2,140,132.17

Undisbursed Loan Funds as of 12/31/02: \$3,682,113.88

**Activity for the Plymouth Waste Oil Loan Program – Hows Corner**

Number of Applications: 40

Number of Loans: 38

Number of Applications left to be disbursed: 2

Total Dollar Amount of Loans disbursed as of 12/31/01: \$40,373.37

Total Dollar Amount of Loans disbursed as of 12/31/02: \$2,099,758.83

Total Dollar Amount Disbursed for Hows Corner: \$2,140,132.17

Estimated Dollar Amount left to be disbursed on two  
outstanding applications: \$160,418.13\*

\*Does not include accumulated interest.

Of the applications left to be disbursed, the reasons for delay included one  
account waiting to clear up title work, and the other is still waiting for the Judges  
Order from the Department of Justice.