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

February 15, 2004

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. The report must also include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up 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, 2003 and ending December 31, 2003, 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, 2003. 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. *
Sarah Walton, Esq. *	Brenda Beaulieu
Dirk Brunner *	Steven Dodge, SFMO
David Lennett, DEP	<i>*Appeals panel member</i>

APPEALS ACTIVITIES

During the calendar year ending December 31, 2003, the Fund Insurance Review Board processed a total of nine appeals, eight of which were heard by the Appeals Panel of the Fund Insurance Review Board. In five cases the Commissioner's/State Fire Marshal's decisions were upheld; in two cases the Commissioner's/State Fire Marshal's decision was overturned and in one case the Commissioner's/State Fire Marshal's decision was upheld in part and the appeals were dismissed in part; one appeal was withdrawn by the appellant. One appeal included a request for attorney's fees, which was granted. 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 2003 appeals by case.

LEGISLATION AND RULE MAKING

In April 2003, the Board adopted changes to Chapter 3 for the purpose of clarifying certain procedures in the appeal process. The revised Rule is included as **Exhibit B**.

REGULATORY CHANGE

The Board filed its Regulatory Agenda on September 17, 2003. A copy is included 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 third 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) 2003 (July 1, 2002 – June 30, 2003). A balance of \$2,682,329 was carried forward from FY 2002. Total net income for FY 2003 was \$20,727,206, including the carry forward balance. Net expenditures totaled \$14,738,790.

During the fiscal year 2003, there was an increase in annual revenue of \$1,342,302 and a decrease in expenditures of \$3,277,864 when compared to the 2002 fiscal year. The surcharge imposed when the balance in the Fund remains below \$5 million dollars for three consecutive months was in effect for the entire 12-month period. In FY 2003 fee refunds to petroleum distributors for oil not stored in Maine totaled \$2,362,709. This represents an increase in fee refunds of approximately \$548,010 when compared to FY 2002. The net revenue during FY2003 includes transfers from FAME (totaling \$1,250,000) and the increase in the surcharge amount, which has been in effect since January, 2002.

During FY 2003 one-time sources of revenue included the return of \$1,250,000 from the low interest, revolving loan monies administered by the Finance Authority of Maine. The Fund Insurance Review Board authorized two transfers from FAME. A transfer of \$750,000 was made in July 2002 and a \$500,000 transfer occurred in February 2003.

TABLE 1

**STATEMENT OF CASH POSITION
GROUNDWATER OIL CLEAN-UP FUND
AT JUNE 30, 2003**

BALANCE FORWARD (July 1, 2002)	\$ 2,682,328.73
INCOME	\$ 19,157,586.19
Minus Fee Refunds	<u>\$ (2,362,708.61)</u>
Sub total	\$ 16,794,877.58
FAME Cash Payments (FY 2003)	\$ 1,250,000.00
NET INCOME	\$ 18,044,877.58
NET BALANCE	\$ 20,727,206.31
EXPENDITURES	
Personal Services	\$ 2,968,199.59
All Other	\$ 9,715,683.90
Capital	\$ 49,787.68
Indirect Cost Transfers	\$ 1,590,991.60
Other Transfers (Excluding FAME)	\$ 414,127.54
NET EXPENDITURES	\$ 14,738,790.31
CASH BALANCE (6/30/2003)	\$ 5,988,416.00
ENCUMBRANCES (6/30/2003)	\$ (741,474.45)
INDIRECT COST OBLIGATION (6/30/2003) (untaken)	\$ (105,400.21)
NET FUND AVAILABILITY (6/30/2003)	\$ 5,141,541.34*

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.

* Does not consider outstanding liabilities required to complete ongoing remedial work, begin characterization of sites that have not been investigated and pay user fee obligations.

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, 2003)	569
Total Eligible	
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2003	224
Total Ineligible	60

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, 2002 through June 30, 2003, the Department received 8 applications for the coverage of clean up costs. There are no pending applications from that period. The Department received one less application than it did in FY 2002 (July 1, 2001 – June 30, 2002). One application that was pending from FY 2002 was also found to be eligible in FY 2003. 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, 2003)	Approximately 1459
Total Eligible	1414
Total Ineligible	45

During FY 03, 220 eligible applications were forwarded to the DEP from the office of the State Fire Marshal. This represents a decrease of 52 eligible applicants when compared to the number of applications (272) referred to the Department from the Office of State Fire Marshal in FY 2002. The decrease 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 weather during the winter of 2002-2003 was cold, but snowfall was moderate, resulting in fewer releases from snow and ice falling from roofs and breaking oil lines and filters and; 2) the Department of Environmental Protection initiated fewer reimbursement actions for clean ups that were not the subject of an application, resulting in the receipt of fewer belated filings for coverage. Three applications were processed and determined to be ineligible for coverage of clean up costs by the Office of the State Fire Marshal during FY 03.

TABLE 4

Total Applications (sum of Tables 2 and 3)

Total Received	2028
Total Eligible	1923
Total Ineligible	105

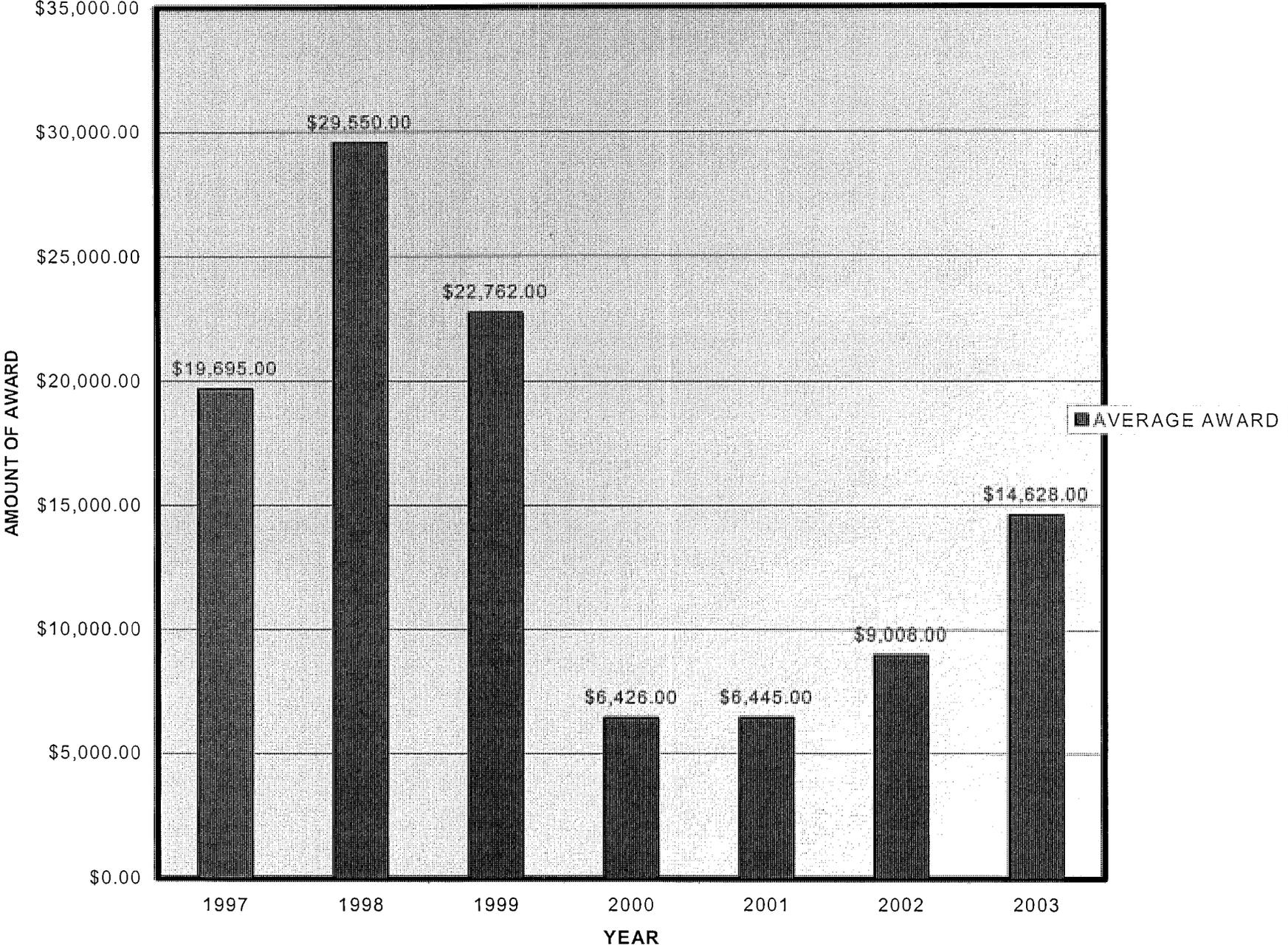
D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 23 claims for third party damages against the Ground Water Oil Clean up Fund.

During fiscal year 2003, the Department completed processing of 13 claims filed against the Ground Water Oil Clean up Fund and awarded a total of \$87,771 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, and 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 2003, seven claims were dismissed, withdrawn or settled without a cash award. Of the six claims processed which included a cash award, two included large property devaluation or point of entry drinking water operation and maintenance subsidies. This resulted in a \$14,628 average cash award per claim processed. The average cash award to third party claimants for calendar year 2002 was \$9,008. 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, in 2000 it was \$6,426, and in 2001 it was \$6,445. Figure 1 illustrates the average cash award from FY 1997 through FY 2003.

Figure 1
AVERAGE THIRD PARTY DAMAGE CLAIM AWARD



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. Nonconforming facilities were subject to proper abandonment by October 1, in 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. All nonconforming 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 37,203 tanks have been properly removed or abandoned in place. From December 31, 2002 to December 30, 2003, there were 38 additional nonconforming tanks registered, a reduction of 44 from the previous year. Each year numerous unregistered bare steel tanks are identified and subsequently registered. As of December 10, 2003, there were approximately 343 registered tanks remaining to be properly removed or abandoned in place. Residential locations account for approximately 217 of these non-compliant tanks.

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 remaining non-complaint facilities.

Currently there are a total of approximately 5,520 underground oil storage tanks registered in the State of Maine. This includes the 343 tanks that still need to complete the abandonment/removal process, of which there are approximately 95 tank owners who have had the tanks removed but who have failed to submit a site assessment that is needed to determine if clean up actions are necessary. Hence the Department is aware of 248 nonconforming tanks that are still underground and must be properly abandoned.

Fund Adequacy

Increased revenues of \$1,343,302 are reported for fiscal year 2003, however, that includes a one-time transfer of \$1,250,000 back to the Fund from the revolving loan fund administered by the Finance Authority of Maine. The increase in the surcharge amount was in place for the entire reporting period. The decrease in net expenditures of \$3,277,864 was an important factor in maintaining the integrity of the Fund.

The combination of the surcharge increase, periodic transfers from FAME and close monitoring of revenue and spending should be sufficient to maintain Fund solvency and support Department efforts to address the backlog of sites awaiting cleanup. Revenue 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. These measures should allow continued use of the Fund to complete ongoing remedial work needed to protect the public health and begin the evaluation of conditions at sites needing characterization work.

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 was "re-designed" to enhance clarity and comprehension. A contract was executed for the research and production of test questions that were used to certify third party inspectors. Eight third party inspectors have been certified to date. This effort implements legislation enacted in the spring of 2001.
2. Education/Outreach: A contract for the production of "Plain Talk on Motor Fuel Tanks" and "Plain Talk on Heating Oil Tanks", was successfully administered. The lay person guide is intended to enhance the understanding of tank owners and operators regarding maintenance, spill, overfill, cathodic protection and leak detection equipment and procedures, and the Department's rules (Chapter 691). Over 1,000 copies have been distributed thus far.
3. Increased field presence: A strategy to perform a greater number of compliance inspections across the state continues to be implemented. In FY 2004, inspection efforts have targeted facilities for which no annual compliance inspection was submitted by the July 1, 2003 deadline.
4. Expedited Enforcement: A strategy is nearly complete that provides for the issuance of an enforcement response on site for certain issues of non-compliance determined during inspections. The strategy consists largely of an agreement with reduced penalties. It will be employed when compliance can be 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 11 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 2003, 590 nonconforming ASTs were removed and replaced at a total cost of \$743,446. Also, nonconforming (buried) fuel supply piping was replaced for 47 households at a cost of \$6,312. Additional expenditures totaling \$18,313 were spent removing eight (8) non-compliant underground storage tanks at residences.

6. 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 outside home heating oil tanks. Two 30 second television ads were created using Oil and Hazardous Materials Specialist, Tom Varney, as the spokesman.

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.

7. Spill Prevention Control and Countermeasure (SPCC) Program: As part of the implementation of the SPCC program, the Department developed and distributed education and outreach materials to aid facility owners and operators in complying with this law. The Department secured the services of Jacques Whitford Company of Portland to develop model SPCC plans, and statewide training was provided in the fall of 2003. Training was provided to 169 attendees at locations in Portland, Bangor, Augusta and Presque Isle.

The Department also hired Stroudwater Associates to completely revamp the UST database. Phase I of this project is complete and DEP staff are using the improved UST database. Phase II will include data from the Office of State Fire Marshal and the Maine Emergency Management Agency and link the data of all three agencies. Phase II of the project is scheduled to begin in 2004.

A staff person has been hired to administer the SPCC program. A strong education and outreach program, including on-call regulatory/technical assistance, technical assistance inspections and maintenance of the AST database is being implemented.

8. The Department proposed legislation to extend the insurance program through December 31, 2010. The proposal was adopted by the Maine Legislature and signed in May, 2002.

Although no major legislative initiatives are being proposed by the Department, minor clarifications to Maine's groundwater protection statutes are included in a Department omnibus bill that corrects errors and omissions in various chapters of Maine's environmental laws. The proposed changes will clarify existing law regarding the processing of third party damage claims and reporting indications of a possible leak or discharge of oil on or under "the premises" or abutting properties. The changes would also allow leak detection systems to be utilized that are capable of detecting product loss or gain of 0.2 gallons or less per hour.

The increase in the detection limit from 0.1 gallons or less per hour to 0.2 gallons or less per hour should result in the installation of more automatic tank gauging systems (ATG's). ATG's are more reliable than some methods currently used to try and meet the stricter 0.1 gallons or less per hour standard. The increase in the detection limit to a 0.2 gallons per hour standard is also consistent with existing federal rule.

Lastly, the proposal seeks to modify the representation of one member of the Fund Insurance Review Board. In response to the closing of the Maine Petroleum Association's office in Maine, the proposal is being made to fill this position with someone from Maine's oil industry who owns five (5) or more retail outlets.

EXHIBIT A

Case-by-Case Analysis of Appeals for 2003

FUND INSURANCE REVIEW BOARD - 2003 APPEALS ANALYSIS

	APPELLANT	DATE APPEAL FILED	DATE CHAPTER 3 SENT TO APPELLANT	DEP/SFMO POSITION STATEMENT DATE	DATE HEARING SCHEDULED	CONTINUANCE DATE	REASONS FOR CONTINUANCE	DATE APPEAL HEARD	OUTCOME
1	Estate of Janice Crabtree	12/4/2002	12/4/2002	12/16/2002	1/14/2003	-	-	01/14/03	Commissioner upheld
2	Jan Oleksiak & Mark McDonald	-	-	-	-	-	-	-	-
	Remanded Issues from 2000 Appeal	12/02/02	12/04/02	-	01/14/03	-	-	01/14/03	Commissioner overturned in part; appeal dismissed in part.
	Continuation	-	-	-	04/08/03	-	-	-	Commissioner overturned in part; appeal dismissed in part.
3	Mark Arsenault d/b/a Neally's Corner Store Inc.	12/11/02	01/14/03	02/14/03	01/14/03	-	-	01/14/03	Commissioner upheld
	Motion for Reconsideration	02/28/03	NA	NA	04/08/03	-	-	04/08/03	Motion for Reconsideration granted; Commissioner overturned.
	Request for Attorney's Fees	05/06/03	NA	NA	07/08/03	08/07/03	No Quorum	08/07/03	Motion Granted
4	Danny Dubay	12/24/02	12/30/02	02/10/03	04/08/03	-	-	04/08/03	Commissioner upheld
5	Harold Daigle	02/05/03	02/05/03	02/18/03	04/08/03	-	-	-	Withdrawn by Appellant (03/24/03)
6	Maine Potato Growers, Inc.	03/31/03	04/01/03	06/05/03	07/08/03	08/07/03	No Quorum	08/07/03	Commissioner upheld
7	Gene Doris Humphrey	04/23/03	04/28/03	06/13/03	07/08/03	08/07/03	No Quorum	08/07/03	Commissioner upheld
8	Edward McKay	05/01/03	05/01/03	06/13/03	07/08/03	08/07/03	No Quorum	-	-
		-	-	-	08/07/03	10/14/03	Appellant not present	10/14/03	Commissioner overturned
9	Ralph Leo	06/04/03	06/10/03	06/30/03	07/08/03	08/07/03	No Quorum	08/07/03	Commissioner upheld

EXHIBIT B

Chapter 3: Appeals Procedure

Chapter 3: APPEALS PROCEDURE

SUMMARY: This chapter outlines the procedures governing the review of appeals filed with the Fund Insurance Review Board of insurance claims-related decisions of the Commissioner of the Department of Environmental Protection and the State Fire Marshal as set forth in the Underground Oil Storage Facilities and Ground Water Protection Act, 38 M.R.S.A. §568-A(3-A). This chapter repeals and replaces the previous chapter 3.

1. Appeals Panel

Pursuant to 38 M.R.S.A. §568-A(3-A), the Appeals Panel of the Fund Insurance Review Board shall hear and decide appeals of insurance claims-related decisions of the Commissioner of the Department of Environmental Protection and the State Fire Marshal (hereinafter collectively referred to as the “Commissioner”) including but not limited to decisions on eligibility for coverage, eligibility for costs and waiver and amount of deductible. The Appeals Panel shall consist of the five public members of the Board as designated pursuant to 38 M.R.S.A. §568-B(1).

2. Notice of Appeal

A. Filing of Notice of Appeal: Pursuant to 38 M.R.S.A. §568-A(3-A), an appeal of the Commissioner’s decision must be filed with the Appeals Panel within 30 days after the applicant receives the Commissioner’s decision. For purposes of this section, “filed” means received by the Appeals Panel. A copy of the notice of appeal, and all other information submitted by the appellant, shall be simultaneously delivered to the Commissioner by mailing the documents, first class, or by in-hand delivery. Unless otherwise provided by statute, a decision of the Commissioner becomes final if no appeal is filed within the 30-day period.

B. Contents of the Notice of Appeal: The notice of appeal shall include, but not be limited to the following:

1. A copy of the Commissioner’s decision;
2. The specific grounds for the appeal and a brief statement of the appellant’s position;
3. The remedy sought; and,
4. If any new evidence is to be offered, the information required in section 4(B) below.

C. Motion to Request a Complete Notice of Appeal: If any party believes a notice of appeal does not meet the requirements of section 2.B, within 15 days of receipt of the notice a

party may file a motion with the Appeals Panel requesting a complete notice of appeal. The appellant shall file a reply or an amended notice of appeal within 15 days of receipt of the motion. If the issues raised by the motion remain unresolved, the motion will be considered by the Panel at its next regularly scheduled meeting, at which time the Appeals Panel may, by majority vote, dismiss the appeal. The filing dates specified in the remainder of this rule are stayed pending the Panel's determination that a complete notice of appeal has been filed.

3. Parties

- A. **Parties as a Matter of Right:** The parties to the appeals proceeding shall consist of the appellant and the Commissioner. Upon application received by the Appeals Panel at least 10 days prior to the scheduled hearing, the Panel shall allow any person showing that he or she is or may be, or is a member of a class which is or may be, substantially and directly affected by the proceeding, or any other agency of federal, state or local government, to intervene as a party to the proceeding.
- B. **Participation of Interested Persons as Parties:** At its discretion, the Appeals Panel may allow any other interested person to intervene and participate as a full or limited party. A request for permission to participate as a party and the reasons for the request must be received by the Panel at least 10 days before the hearing.
- C. **Statement of Interested Persons:** At its discretion, the Appeals Panel may allow statements by members of the public at a hearing, even if those individuals are not formally parties to the proceeding.

4. Record

- A. **Record Before the Commissioner:** The record before the Appeals Panel shall consist of the notice of appeal and the entire record that was developed before the Commissioner at the time he or she made the decision which is being appealed. However, the Appeals Panel will review only those parts of the record which have been forwarded to the Panel by the parties. Therefore, within 15 days of the Commissioner's receipt of a complete notice of appeal, the Commissioner shall file with the Appeals Panel those parts of the record which he or she deems pertinent to the issues presented in the notice of appeal, hereinafter referred to as the appellate record. For purposes of this section, "filed" means received by the Appeals Panel. The Commissioner shall simultaneously deliver a copy of the appellate record to the appellant by mailing the record, first class, or by in-hand delivery.

Instead of filing the record within 15 days of receipt of a complete notice of appeal, the Commissioner may file a request for an extension of time in which to file the record so long as the extension does not seek permission to file the record less than 30 days prior to the anticipated hearing date, which is the next scheduled meeting of the Appeals Panel. The request shall indicate whether any parties object to the request. Requests shall be ruled upon by the Chair of the Panel or his or her designee, who shall notify the parties of the decision.

Within 10 days of receiving the appellate record from the Commissioner, the appellant shall file with the Appeals Panel those documents from the record that was developed before the Commissioner which it deems necessary to supplement the appellate record as provided by the Commissioner. The appellant shall simultaneously deliver a copy of the supplemental documents filed to the Commissioner by mailing the documents, first class, or by in-hand delivery. Upon filing of the record pursuant to this paragraph, or expiration of these time periods, whichever first occurs, the appeal shall be deemed complete and ready for action by the Appeals Panel.

- B. **New Evidence:** The Appeals Panel will not accept any new evidence unless it finds that it is relevant and that such evidence could not have been submitted to the Commissioner as part of the application process. If the appellant seeks to introduce new evidence in support of its appeal, the appellant shall provide an offer of proof as part of the notice of appeal which shall contain the following information: (1) a summary of what the evidence is expected to show and why it is relevant to the appeal; (2) the nature or form of such evidence, i.e., whether the evidence is documentary or testimonial or both; (3) the reason(s) why such evidence could not have been presented to the Commissioner; and, (4) copies of any documents which the appellant proposes to offer as new evidence. At the hearing, the Appeals Panel shall determine, by majority vote, whether it will accept the new evidence or remand the proceeding to the Commissioner for consideration of such evidence. Written testimonial evidence shall not be admitted into the record unless the author of such testimony is available for cross-examination or subject to subpoena, except for good cause.
- C. **Statement of Position:** Any party may file a statement of position on the appeal for inclusion in the record. The statement of position must be received by the Appeals Panel and all parties to the proceeding at least 10 days before the hearing.
- D. **Documents prepared by Staff:** Summary documents prepared by the staff of the Appeals Panel shall be included in the record and served upon all parties.
- E. **Post-hearing Submissions:** The Appeals Panel may, by majority vote taken at the hearing, agree to accept additional material for consideration after the close of the hearing. The date by which any such submission must be received by the Panel will be established at the hearing.
- F. **Consequences of Failure to Meet Filing Deadline:** Except for documents referred to in subsection D and E, if any submissions for the record have not been received by the Appeals Panel or other parties to the proceeding within the applicable time period set forth in these rules, the Appeals Panel may refuse to accept and consider such submissions or the Chair of the Panel or his or her designee may postpone the hearing until a later date.

5. Scope of Review

Except for issues which by law may be raised at any time, such as jurisdictional issues, or issues raised by new evidence accepted by the Appeals Panel, the review by the Appeals Panel shall be limited to issues raised in the notice of appeal that were raised for consideration before the Commissioner. The review of the record on such issues shall be de novo.

6. Hearing

- A. Date of Hearing: An appeal shall be scheduled for hearing at the next meeting of the Appeals Panel following the filing of a complete record pursuant to section 4(A), unless the Appeals Panel and the appellant agree to a continuance.
- B. Continuances: A request by the appellant for a continuance must be received by the Appeals Panel at least 10 days prior to the hearing. Requests shall be ruled upon by the Chair of the Panel or his or her designee. If a continuance is granted, the hearing shall be rescheduled for the next meeting of the Panel at which time is available.
- C. Witnesses: All witnesses shall be sworn.
- D. New Evidence: Directly after the commencement of the hearing, if there has been a request to consider new evidence, the Appeals Panel shall determine, by majority vote, whether to accept such evidence pursuant to section 4(B).
- E. Format of the Hearing: Unless a different format is warranted by the circumstances, the hearing shall be structured as follows. After consideration of whether new evidence may be presented as set forth in subsection D, the appellant shall be present and make a statement, either personally or through counsel, explaining his appeal. Witnesses or new evidence shall be presented at this time, if permitted by the Panel. The Commissioner or designee, the Appeals Panel, staff and counsel may ask questions of the appellant and any witness. At the conclusion of the presentation of the appellant's case, the Commissioner or designee shall present his position. The appellant or counsel for the appellant, the Appeals Panel, staff and counsel may ask questions of the Commissioner and any witness. All hearings shall be recorded.

7. Decision

- A. Voting: A quorum of at least 3/5's of the Appeals Panel shall be necessary for action by the Panel. A tie vote constitutes denial of the appeal.
- B. Participation by Panel Members: No member of the Appeals Panel may participate in review of an appeal if the member has a direct or indirect pecuniary interest in the outcome of the appeal, or if the member represents, or is member of a firm or association which represents, the interest of any of the parties before the Panel in the appeal under consideration. Where a Panel member does not voluntarily abstain in such situations, the remaining members of the Appeals Panel may determine, by majority vote, whether abstention is required.

- C. Action of the Panel: After consideration of the appeal, the Appeals Panel may take the following action by majority vote:
 - 1. Grant the appeal in whole or in part;
 - 2. Deny the appeal in whole or in part;
 - 3. Remand the appeal back to the Commissioner; or
 - 4. Continue the appeal to a later date.
- D. Effective Date of Decision: The decision of the Appeals Panel is not final until the Chair or the Chair's designee signs the written decision.
- E. Judicial Review: Decisions of the Appeals Panel are subject to judicial review pursuant to Title 5, Chapter 375, subchapter VII.

8. Motion for Reconsideration

- A. Basis for Motion: A motion for reconsideration will not be considered by the Appeals Panel unless it is based upon one or both of the following grounds:
 - 1. New or additional evidence exists that was not considered during the appeal and that could not have been presented to the Panel at the time of the appeal; or
 - 2. The Panel's decision contains an error of law or relies on facts contrary to those in the record.
- B. Filing of Motion: A motion for reconsideration must be filed with the Appeals Panel within 30 days of receipt of the written decision of the Appeals Panel. For purposes of this section, "filed" means received by the Appeals Panel. A copy of any motion must be simultaneously delivered to the other parties to the proceeding, by mailing the documents, first class, or by in-hand delivery.
- C. Response to the Motion: Any party wishing to respond to a motion for reconsideration shall file its response within 20 days of the date the motion was filed with the Panel. A copy of any response filed must be simultaneously delivered to the other parties to the proceeding by mailing the documents, first class, or by in-hand delivery.
- D. Hearing of the Motion: The parties shall be notified when the Appeals Panel will consider the motion for reconsideration. At the hearing, the Panel may, at its discretion, permit oral arguments by the parties or consider the motion based only upon the written submission. If the Appeals Panel votes to grant the motion to reconsider its decision, the Panel will reconsider the appeal on its merits at the same meeting, unless an evidentiary hearing is required.
- E. Decision on the Motion: The decision of the Appeals Panel denying the motion for reconsideration will be reflected in the minutes of the meeting and no separate order will

be issued. If the Panel votes to grant the motion, after further hearing if necessary, a new decision will be issued as set forth in section 7.

- F. Effect of Filing a Motion: If a motion for reconsideration is filed, the Panel's decision shall not be considered final and the period within which an appeal of the Panel's decision must be filed in Superior Court does not begin to run. If the Panel denies the motion, the appellant has 30 days from receipt of notice of the Panel's decision within which to appeal the decision to Superior Court.

9. Costs and Attorney Fees

Pursuant to 38 M.R.S.A. §568-A(3-A), if the Appeals Panel overturns the Commissioner's decision, reasonable costs, including reasonable attorney fees incurred from the time of a claims-related decision forward, will be paid by the fund for costs incurred in pursuing the appeal. In order to receive payment, the prevailing party must submit documentation substantiating its costs and fees to the Appeals Panel for approval, with a copy to the Commissioner, within 30 days of receipt of the Panel's decision. Parties will be notified of the date of the meeting when the submission will be considered by the Panel. At such time, the Panel shall consider comments by the Commissioner or designee and the Panel's staff regarding the reasonableness of the amount that has been submitted for approval. An hourly rate for "reasonable attorney fees" is the established hourly rate of the attorney, but may not exceed \$100.00 per hour. However, the Panel has the right to approve less than the amount of the costs or fees requested based upon its determination of what is reasonable under the circumstances of a particular case. The decision of the Appeals Panel regarding attorney fees will be stated in the minutes of the meeting and no separate order will be issued.

STATUTORY AUTHORITY: 38 M.R.S.A. §§ 568-A(3-A) and 568-B(1)

EFFECTIVE DATE:
May 28, 1994

REPEALED AND REPLACED:
December 4, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 28, 1996

NON-SUBSTANTIVE CORRECTIONS:
August 19, 1997 - minor spelling and punctuation.

REPEALED AND REPLACED:
April 22, 2003 - filing 2003-105

EXHIBIT C

Regulatory Agenda 2003

2003-2004 REGULATORY AGENDA

September 17, 2003

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:
Chapter 3

EXPECTED 2003-2004 RULE-MAKING ACTIVITY:

CHAPTER 3: Appeals Procedures

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

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

ANTICIPATED SCHEDULE: The Board constantly reviews 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, 2004.

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, 2004.

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, 2004.

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, 2004.

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

Plymouth Waste Oil Clean-Up Program

Opening Fund Balance (6/30/03):		\$3,772,549.12
Number of Applications Received:	22	
Amount of Applications Received:		\$ 792,081.53
Number of Loans Disbursed:	17	
Amount of Loans Disbursed:		\$ 569,703.41
Number of Loans Pending:	4	
Amount of Loans Pending:		\$ 214,292.36
Number of Loans Withdrawn:	1	
Amount of Loans Withdrawn:		\$ 21,251.14
Closing Fund Balance (12/31/03):		\$2,988,553.35

The Plymouth Waste Oil Fund was established in Maine law and in M.R.S.A. Title 10 Section 1023- M, it states that the "fund may be used for direct loans or deferred loans for all or part of the costs of the Plymouth waste oil site remedial study, past cost settlement, implementation of institutional controls selected by the United States Environmental Protection Agency to prevent use of contaminated groundwater by nearby residents and time-critical removal action costs when the authority determines that"...certain criteria have been met.

This program has been instrumental in protecting the health, welfare and safety of the citizens of the State and is ongoing. The Board notes that there has been another round of assessments against the potentially responsible party (PRP) group, and legislation extending the use of the fund (and the program) to cover those assessments is currently being drafted. It is expected that the assessments will be significant and this fund will be valuable in offsetting the impact of these additional assessments. The time frame to accomplish the complete remediation of the site and repayment of response costs is still unknown.