

MAINE STATE LEGISLATURE

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February 15, 2006

Senator Scott W. Cowger, Chair
Joint Standing Committee on Natural Resources
100 State House Station
Augusta, ME 04333-0003

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

Dear Senator Cowger, 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 fiscal year ending June 30, 2005.

If you have any questions you may contact either Michelle MacKenzie of the Finance Authority of Maine at 623-3263 x.304 or me at Dead River Company at 364-3751.

Sincerely,


Michael Bonzagni, Chair
Fund Insurance Review Board

Enclosure

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

February 15, 2006

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, 2005 and ending December 31, 2005, 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 C**, highlights the Board and FAME's experience in administering this Program through December 31, 2005. 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 *

Richard Knowlton *

Jamie Py

Robert Bender, Sr. *

Sarah Walton, Esq.*

Brenda Beaulieu

Dirk Brunner *

Steven Dodge, SFMO

Steve Davis, DEP

**Appeals panel member*

APPEALS ACTIVITIES

During the calendar year ending December 31, 2005, the Fund Insurance Review Board processed a total of **fourteen** appeals, ten of which were heard by the Appeals Panel of the Fund Insurance Review Board. In **five** cases the Commissioner's/State Fire Marshal's decision was upheld and in **three** cases the Commissioner's/State Fire Marshal's decision was overturned, **one** appeal was overturned in part and upheld in part. **One** appeal was dismissed, **one** appeal was withdrawn by the appellant and **three** were carried forward to 2006. 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 2005 appeals by case.

REGULATORY CHANGE

The Board filed its Regulatory Agenda on July 1, 2005. A copy is included as **Exhibit B**.

PART II

ADMINISTRATION OF THE FUND:

DEPARTMENT OF ENVIRONMENTAL PROTECTION

EXHIBIT A

Case-by-Case Analysis of Appeals for 2005

FUND INSURANCE REVIEW BOARD - 2005 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	Michael Armstrong	10/20/04	10/20/04	10/20/04	01/04/05			01/04/05	Fire Marshall Upheld in part Fire Marshall Overturned in part
2	Gary Kenison	11/01/04	11/02/04	11/05/04	01/04/05			01/04/05	Fire Marshall overturned
3	Paul & Belinda Saulle	12/15/04	2/17/2005	03/23/05	04/05/05	07/12/05	Appellent did not receive DEP materials	-	-
						10/04/05	Appellant couldn't make it	10/04/05	Commissioner upheld
4	Christopher Quigg	01/03/05	2/17/2005	01/03/05	04/05/05	-	-	04/05/05	Dismissed
5	Scott Tracy	10/19/04	02/17/05	10/20/04	04/05/05	-	-	04/05/05	Fire Marshall overturned
6	Dr. Arthur Carton	02/24/05	03/04/05	03/23/05	04/05/05	07/12/05	Appellent did not receive DEP materials	-	-
						10/04/05	Attorney out of town	10/04/05	Commissioner upheld
7	Montreal, Maine & Atlantic Railway	03/16/05	03/17/05		07/12/05	-	-	07/12/05	Commissioner upheld
8	Duval's Service Center	05/03/05	05/03/05		07/12/05	-	-	07/12/05	Commissioner overturned
9	Lonny Cilley	05/19/05	05/20/05	05/31/05	07/12/05	10/04/05	request change		
						01/03/06		01/03/06	
10	Larry Beaulieu	06/22/05	07/15/05	07/01/05	10/04/05			10/04/05	Fire Marshall upheld
11	C&S One Stop	7/20/2005	7/20/2005	-	-	-	-	-	appeal withdrawn
12	Maine Industrial Repair Services, Inc.	8/22/2005	8/22/2005	8/23/2005	10/4/2005			10/4/2005	Commissioner upheld
13	Titus Gas & Oil	9/8/2005	9/14/2005	9/14/2005	1/3/2006			1/3/2006	
14	Maritime Energy	9/26/2005	10/5/2005		1/3/2006	4/4/2006	short notice		
	appeals heard	10							
	withdrawn	1							
	carried to 2006	3							
	appeals processed	14							
	DEP/SFMO upheld	5							
	DEP/SFMO overturned	3							
	overturned/upheld	1							
	Dismissed	1							

EXHIBIT B:

Regulatory Agenda 2005

90-564
Fund Insurance Review Board
2005-2006 Regulatory Agenda

AGENCY UMBRELLA-UNIT NUMBER: 90-564
AGENCY NAME: Fund Insurance Review Board

CONTACT PERSON: Michelle MacKenzie, Finance Authority of Maine, 5 Community Dr., P.O. Box 949, Augusta, Maine 04332-0949. Tel: (207) 623-3263. mmackenzie@famemaine.com

EMERGENCY RULES ADOPTED SINCE LAST REGULATORY AGENDA: None

EXPECTED 2005-2006 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 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, 2005 or prior to the deadline required by law, whichever is earliest in time.

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 such 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, 2005 or prior to the deadline required by law, whichever is earliest in time.

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, 2005 or prior to the deadline required by law, whichever is earliest in time.

AFFECTED PARTIES: Owners and operators of aboveground oil storage facilities who applied

for coverage from 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, 2005 or prior to the deadline required by law, whichever is earliest in time.

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 C:

Plymouth Waste Oil Clean-up Loan Program Report

Plymouth Waste Oil Clean-Up Fund¹

Balance 07/01/04	\$ 3,071,989.66	\$ 3,071,989.66
Interest Income	\$ 74,136.05	
Net Income	\$ 74,136.05	\$ 74,136.05
Net Balance		\$ 3,146,125.71
Loans Disbursed	\$ 387,341.01	
Plymouth Loan Fees ²	\$ 31,998.77	
Fund Expenses	\$ 191.55	
Net Expenses	\$ 419,531.33	\$ (419,531.33)
Cash Balance		\$ 2,726,594.38
Loans Pending	\$ 49,805.80	\$ (49,805.80)
Net Availability as of 06/30/05		\$ 2,676,788.58

The Plymouth Waste Oil Fund was established in Maine law (10 M.R.S.A. Section 1023-L) 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 eligibility criteria have been met.

The Plymouth Waste Oil Clean-Up Program has been instrumental in protecting the health, welfare and safety of the citizens of the State and is ongoing. The program is currently closed to new applications, although it is anticipated that it will be re-opened within another year for a possible final round of disbursements related to the actual cost of remediation.

There has been no significant fund activity in the 2005 fiscal year other than **six** disbursements (totaling **\$387,341.01**) related to the last round of loan increases in 2004. **Two** loans are still pending, totaling **\$49,805.80**, leaving a **Fund Balance as of June 30, 2005 of \$2,676,788.58**. However, it is anticipated that the Record of Decision in the matter of the Plymouth Waste Oil Site will be issued by the U.S. Environmental Protection Agency (“EPA”) sometime in 2006. This will be the EPA

¹ Please note that previous reports have reported fund activity on a calendar year basis. With this and future reports, however, fund activity will be shown on a fiscal year basis consistent with FAME’s fiscal year which runs from July 1 to June 30. Thus, the activity reported for fiscal year 2005 begins July 1, 2004 and closes June 30, 2005. Next year’s report will begin with July 1, 2005 and run through June 30, 2006.

² FAME is authorized pursuant to 10 M.R.S.A. Section 1023-L(3-A) and Chapter 318 of the Rules of the Finance Authority of Maine to deduct a 2% loan origination and processing fee on closed loans and a 1% loan administration fee annually thereafter on the outstanding principal loan balance.

decision regarding the method and cost of remediating the contamination related to the site. Thereafter, the Potentially Responsible Parties ("PRPs") will enter into negotiations with the EPA to implement the remedy and the PRPs will most likely then be assessed their share of the cost of implementation. All of the borrowers in this program are PRPs who belong to a PRP group (but not all PRPs, whether or not they belong to the group, are participating in the program). Thus it is anticipated that current borrowers will seek additional loan increases from the fund, probably sometime in early 2007. With each assessment, there has been new legislation amending the statute to allow additional disbursement and open up the program for applications, as well as amendments to Chapter 318 of the Rules of the Finance Authority of Maine.

It is expected that the final assessment will be significant and this fund will be valuable in offsetting its impact. While there is no way currently to estimate the final amount that will be necessary to cover the costs of the remedy, it is possible that the fund will be inadequate to cover those costs to existing or new borrowers. The time frame to accomplish the complete remediation of the site and repayment of response costs is still unknown.

PART II

**ADMINISTRATION OF THE FUND:
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

PART II

Administration of the Ground Water Oil Clean-up 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 Fund Insurance Review Board's experience administering the Ground Water Oil Clean-up Fund ("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) 2005 (July 1, 2004 – June 30, 2005). A balance of \$9,224,507 was carried forward from FY 2004. Total net income for FY 2005 was \$22,118,000, including the carry forward balance. Net expenditures totaled \$16,544,605.

During the fiscal year 2005, there was a decrease in annual income of \$6,079,713 and a decrease in expenditures of \$1,680,623 when compared to the 2004 fiscal year. The surcharge imposed when the balance in the Fund remains below \$5 million dollars for three consecutive months was not in effect for the entire 12-month period. The net income during FY 2005 reflects this fact and the fact that there were no transfers from FAME. The surcharge was reinstated during FY 2006, effective January 1, 2006. Additionally in FY 2005, fee refunds to petroleum distributors for oil not stored in Maine totaled \$1,180,831. This represents a decrease in fee refunds of approximately \$1,555,488 when compared to FY 2004

TABLE 1

**STATEMENT OF CASH POSITION
GROUNDWATER OIL CLEAN-UP FUND
AT JUNE 30, 2005**

BALANCE FORWARD (July 1, 2004)	\$ 9,224,507.32
INCOME	\$ 14,074,323.78
Minus Fee Refunds	\$ 1,180,830.98
FAME Cash Payments (FY 2005)	\$ -0-
NET INCOME	\$ 12,893,492.80
NET BALANCE	\$ 22,118,000.12
EXPENDITURES	
Personal Services	\$ 3,282,413.59
All Other	\$ 10,508,532.63
Capital	\$ 182,935.44
Indirect Cost Transfers	\$ 1,685,329.97
Other Transfers (Excluding FAME)	\$ 885,393.63
NET EXPENDITURES	\$ 16,544,605.26
CASH BALANCE (6/30/2005)	\$ 5,573,394.86
ENCUMBRANCES (6/30/2005)	\$ 1,484,126.87
INDIRECT COST OBLIGATION (6/30/2005) (untaken)	\$ 148,758.80
NET FUND AVAILABILITY (6/30/2005)	\$ 3,940,509.19*

NOTES:

INCOME REPRESENTS FEES, INTEREST, REIMBURSEMENTS, FINES, MISC. INCOME.
OTHER TRANSFERS ARE FOR OTHER STATE AGENCIES, INTERNAL TO OTHER ACCT
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, 2005)	607
Total Eligible	544
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2004	259
Total Ineligible	63

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, 2004, through June 30, 2005, the Department received 30 applications for the coverage of clean up costs. One applicant was determined to be ineligible in FY 2005. This is an increase of 22 applications compared to the number of applications received in FY 2004. Approximately one third of these are the result of DEP cost recovery efforts involving applicants that failed to apply for Fund coverage at the time of the discharge. There are no pending applications from that period.

Note: 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, 2005)	1848
Total Eligible	1791
Total Ineligible	57

During FY 05, 211 eligible applications were forwarded to the DEP from the Office of State Fire Marshal. This represents a increase of 60 eligible applicants when compared to the number of applications (151) referred to the Department from the Office of State Fire Marshal in FY 2004. The increase in the number of applicants for the coverage of eligible clean up costs from aboveground storage tanks may be attributed to several factors: 1) the weather during the winter of 2004 -2005 was cold, with heavy snowfall, resulting in more releases from snow and ice falling from roofs and breaking oil lines and filters 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 belated filings for coverage. Nine applications were processed by the Office of the State Fire Marshal during FY 05 and determined to be ineligible for coverage of cleanup costs.

TABLE 4

**Total Applications (sum of Tables 2 and 3)
(July 1, 1990 – June 30, 2004)**

Total Received	2455
Total Eligible	2335
Total Ineligible	120

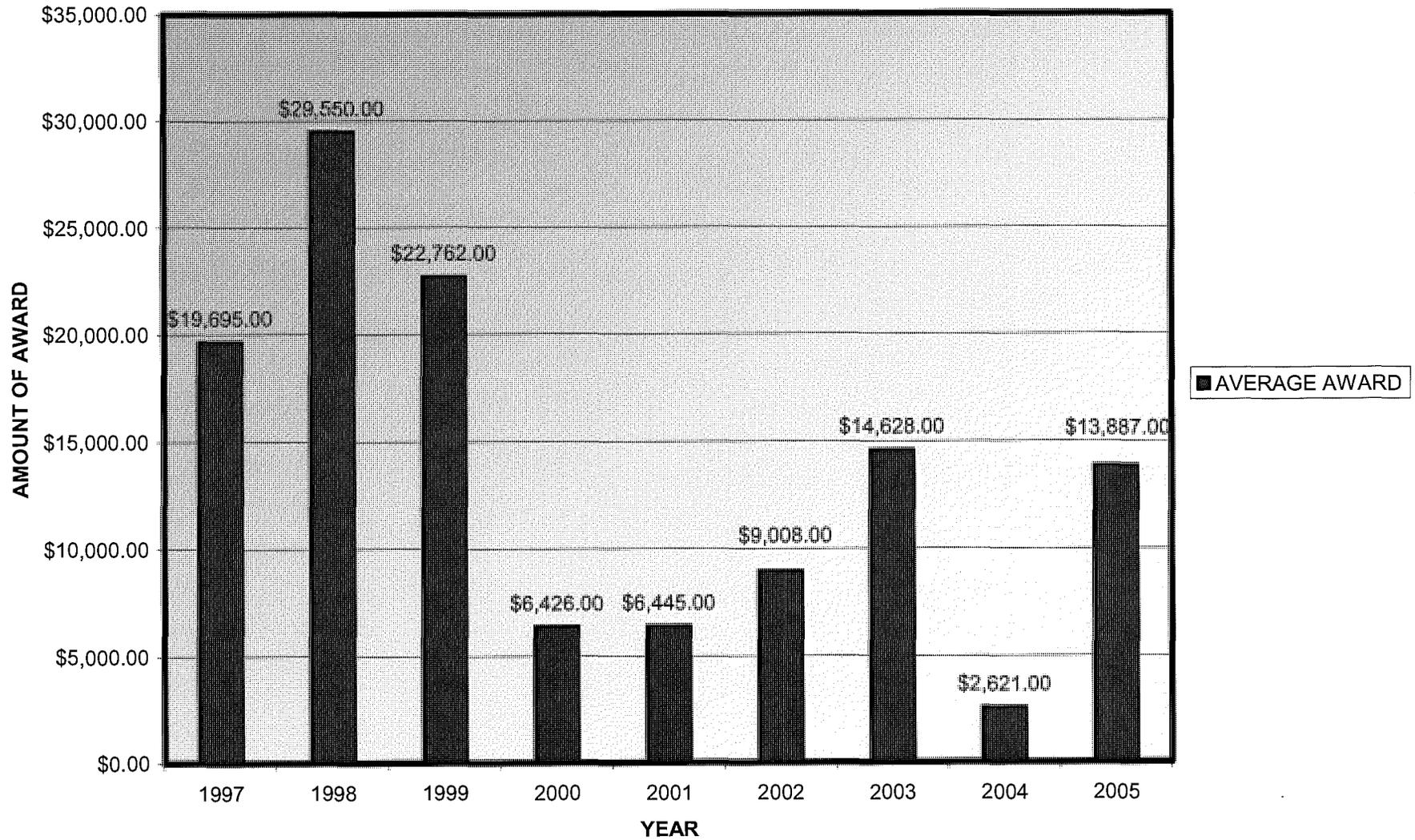
D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 25 claims for third party damages against the Ground Water Oil Clean-up Fund.

During fiscal year 2005, the Department completed processing of five claims filed against the Ground Water Oil Clean-up Fund and awarded a total of \$41,661 in cash damages 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 2005, one claim was dismissed, withdrawn or settled without a cash award and three claims were processed and the claimants received a cash award for property devaluation. This resulted in a \$13,887 average cash award based on the three claims processed. The average cash award to third party claimants for calendar year 2004 was \$2,621. The average cash award to third party claimants for calendar year 2003 was \$14,628. The average cash award is easily influenced by the number of claims processed that include a cash award. Settlement of a small number of claims that includes property devaluation for a property or properties located where property values are high can result in a high average award. Processing multiple claims in an area that includes individual point of entry treatment units for drinking water supplies may involve awards for property devaluation and operational subsidies for maintaining and monitoring the effectiveness of the treatment system. This scenario would also likely result in a high average award for that year. Figure 1 illustrates the average cash award from 1997 through 2005.

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. Non-conforming facilities were subject to proper abandonment by October 1, 1989; 1991; 1994 and 1997 respectively, 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.

Approximately 34,870 registered, nonconforming (bare steel) tanks were subject to the statutory removal deadline of October 1, 1998. As of December 2005, 35,071 bare steel tanks have been properly removed or abandoned in place. Each year, additional bare steel tanks are identified and registered with DEP. In calendar year 2005, there were 89 of these tanks newly registered. In calendar year 2004, there were approximately 121 non-conforming tanks registered and removed.

Of the 231 underground tanks removed in 2005, 88 of them were bare steel. Currently there are 283 bare steel tanks remaining to be properly removed or abandoned in place. This is a reduction of 41 tanks when compared to last year's report. About 140 of these bare steel tanks are located at residential locations. The Department continues to use a combination of technical assistance and enforcement actions to get these tanks removed, with priority given to locations in sensitive geologic areas.

To date, a total of 37,903 underground tanks have been removed, including about 60 tanks of miscellaneous construction, and 2,772 conforming tanks. Owners of 90 of these locations have failed to submit the required site assessment. The site assessment is needed to determine if clean-up actions are necessary. Currently, there are approximately 5,217 underground oil storage tanks registered and in operation in the State of Maine.

Fund Adequacy

During fiscal year 2005 there was a decrease in expenditures of \$1,680,623 and a decrease in annual income of \$6,079,713 when compared to FY 2004. The surcharge was not in place for the entire reporting period. The surcharge was discontinued effective July 1, 2004, the first day of the state fiscal year 2005. At the end of the fiscal year, there was a net fund availability of \$3,940,509.

The flexibility provided by the surcharge to increase revenue, periodic transfers from FAME and close monitoring of revenue and spending should be sufficient to maintain Fund solvency and support the Department's ongoing efforts to address the backlog of sites awaiting cleanup. Although the backlog of sites needing remedial work has declined from 454 (2002) to 343 (2004) to 307 (2005), 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. Revenue and expenditures must also be carefully monitored to ensure they remain in alignment. 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. In FY 2005, 412 Notices of Violation were issued to all non-compliant tank owners for violations of this requirement.

The annual inspection must be completed by an installer or inspector certified by the Maine Board of Underground Storage Tank Installers. The latter is a new category of certification developed following passage in 2001 of "An Act to Improve the Inspection and Maintenance of Underground Oil Storage Tanks". A total of one hundred twenty (120) third party installers (87) and inspectors (33) have been certified to date. In January 2005, DEP sponsored a day long training program for certified tank installers and certified tank inspectors. Approximately 160 participants attended, and feedback was positive.

Compliance with the annual inspection law gradually improved from 70% by mid year 2004 to 80% in 2005. DEP staff continues to use a combination of inspections, outreach and enforcement to get facility owners into compliance with the annual inspection law.

2. Increased field presence: A strategy to maintain a strong field presence through the performance of compliance inspections across the state continues to be implemented. In FY 2005, inspection efforts targeted facilities for which no annual compliance inspection was done in last 12 months. Approximately 420 on-site inspections were completed during the 2005 calendar year. Compliance inspections include education and technical assistance components. Notices of Violation are issued on-site and include deadlines for gaining compliance. As the result of a hiring freeze, one inspector position has remained vacant for an extended period and the number of on-site inspections will be reduced in FY 2006.

The staff from the Bureau of Air Quality Control and the Bureau of Remediation and Waste Management implemented a plan to train employees to conduct cross media compliance inspections at gasoline stations equipped with vapor recovery systems. Periodic meetings were held between January and April, 2005 to transfer information and knowledge regarding the inspection of vapor recovery systems. During this time inspection checklists and enforcement response documents (i.e. Notice of Violation) were edited and printed. Beginning in May 2005, the checklists were used to record the results of multi-media inspections by staff from the two program areas.

Additionally, Maine's underground oil storage tank installers and inspectors checked for compliance with applicable Stage 1 vapor recovery requirements as part of the annual inspections performed at each facility. More information on

this effort is being prepared as part of a separate report due to the Joint Standing Committee on Natural Resources.

3. **AST/UST Replacement:** The Department has continued its contractual relationship with Maine's nine community action agencies for the seventh 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 2005, 750 non-conforming AST's were removed and replaced at a total cost of \$1,077,916. Also, non-conforming (buried) fuel supply piping was replaced at 27 households at a cost of \$4,119. Non-conforming underground oil storage tanks were removed at six residences at a cost of \$14,027.

When compared to 2004, expenditures for replacements were increased by \$131,398.50 in 2005.

In FY 2004, 733 non-conforming AST's were removed and replaced at a total cost of \$932,121.73. Also, non-conforming (buried) fuel supply piping was replaced for 58 households at a cost of \$7,772.71. Additional expenditures totaling \$24,768.56 were spent removing 7 non-compliant underground oil storage tanks at residences.

4. **Spill Prevention Control and Countermeasures (SPCC) Program:** During 2005, the SPCC Program continued to work on the Department's tank databases, conduct SPCC technical assistance site visits, provide educational articles for the Department's "Tanks in Maine" newsletter, and provide spill prevention and control information to facility owner/operators and consultants upon request.

Tank databases

Program staff continued to refine its own AST list originally compiled in 2003 from several state agency databases. Information in this list is adjusted as information is field checked via SPCC site visits, and as new information becomes available from other sources.

Another ongoing database task is the incorporation of AST data into the Department's existing database for underground storage tank (UST) facilities. SPCC program staff plan to enter AST data into the database from two sources: permits issued by the State Fire Marshal's Office (SFMO) and field-verified data from site visits by SPCC program staff. During 2005, SFMO staff were trained to enter data into the DEP tanks database and have started doing this. This winter DEP staff plan to enter tank data obtained through DEP site visits.

Long standing technical issues with the Department's tank database has hampered the SFMO/DEP data merger. These issues have not all been resolved to date, and the DEP may contract with an outside consultant to rectify the database problems.

SPCC technical assistance site visits to individual facilities

SPCC program staff continued to visit individual facilities in 2005 to provide technical assistance for spill prevention and control, to facilitate SPCC planning where needed, and to enforce the DEP's rules for underground piping where necessary. Fifty-five site visits were conducted in 2005, and 32 SPCC plans were reviewed as part of these site visits.

5. Aboveground Storage Tank (AST) Proposal: In an effort to further reduce significant discharges to groundwater and surface water bodies, the Department will be proposing legislation to close the gap between the standards governing underground piping associated with AST's and similar piping at UST facilities. The proposal has two major elements. One to require the phased retrofitting of leak detection on piping at an estimated 300-500 AST facilities installed before June 24, 1991. Piping installed prior to that date at AST facilities is not required to have any leak detection until and unless it is replaced, and there is no replacement schedule mandated by statute. As a result, some older underground piping at AST facilities may operate without leak detection until a leak is discovered, at which point it then must be replaced and brought in compliance with all the current requirements of Chapter 691.

To address this issue, staff drafted proposed legislation to require all motor fuel AST facilities having underground piping installed prior to June 24, 1991 without leak detection to be brought into full compliance with the leak detection requirements of Chapter 691 by January 1, 2011. The proposed legislation also requires motor fuel AST facilities with underground piping to be registered with the Department and requires the facility owner to submit annual underground piping inspection reports. The legislation will be introduced for consideration during the Second Session of the 122nd Maine Legislature.

6. Oil Spill Reporting Survey and Focus Group: At the request of the Maine Legislature's Natural Resources Committee, Department staff convened a focus group to review spill reporting requirements for AST facilities in Maine, and report back to the Committee by February 15, 2006, with findings and recommendations on this issue. During 2005, program staff conducted a survey of 13 states (including Maine) and the U.S. Environmental Protection Agency (EPA) regarding their oil spill reporting requirements. DEP subsequently convened a group of interested parties to discuss the issue of oil spill reporting and possible alternative regulatory proposals. The Department is preparing a detailed report of its findings and recommendations for presentation to the Natural Resources Committee by February 15, 2006.
7. Rule making on Oil Fee Refunds: On November 28, 2005, rules governing Payment and Reimbursement of Oil Transfer Fees took effect. The Rule, Chapter 685 of the Code of Maine Rules (685 CMR), sets forth the procedure for paying the fees imposed on the transfer and transport of oil to the Maine Coastal and Inland Surface Oil Clean-up Fund and the Groundwater Oil Clean-up Fund as authorized by Maine law. The rule also describes the procedure for application for a refund of the fee when the oil is subsequently exported from the State and not imported back into Maine.