

# MAINE STATE LEGISLATURE

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

**February 15, 2007**

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:

**On or before February 15<sup>th</sup> of each year, the Fund Insurance Review Board, with the cooperation of the Commissioner, shall report to the joint standing committee of the Legislature with jurisdiction over natural resource matters on the Department's and the Board'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, 2006 and ending December 31, 2006, 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, 2006. 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

Mark Hyland, DEP

*\*Appeals panel member*

## APPEALS ACTIVITIES

During the calendar year ending December 31, 2006, the Fund Insurance Review Board processed a total of ten appeals, two of which were heard by the Appeals Panel of the Fund Insurance Review Board. In one case the Commissioner's/State Fire Marshal's decision was upheld, none were overturned, one appeal was remanded to the DEP, three appeals were withdrawn by the appellants and five were carried forward to 2007. In carrying out its responsibilities, the full Board held three business meetings and two meetings of the Appeals Panel during which hearings were conducted. Attached, as **Exhibit A**, is a copy of an analysis of 2006 appeals by case.

## REGULATORY CHANGE

The Board filed its Regulatory Agenda on August 10, 2006. 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 2006**

**FUND INSURANCE REVIEW BOARD - 2006 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	Lonny Cilley	05/19/05	05/20/05	05/31/05	07/12/05	10/04/05	request change	X	X
						01/03/06		X	X
					04/04/06			4/4/2006	Commissioner Upheld
2	Larry Beaulieu	06/22/05	07/15/05	07/01/05	10/04/05			10/04/05	Fire Marshal upheld
	Larry Beaulieu motion to reconsider	01/06/06			04/04/06	07/11/06	meeting canceled	X	X
	Continued					10/04/06	parties unavailable	X	X
	Continued					01/09/07			
3	Titus Gas & Oil	09/08/05	09/14/05	09/14/05	01/03/06			01/03/06	Remanded to DEP
4	Maritime Energy	09/26/05	10/05/05		01/03/06	04/04/06	short notice	X	X
						07/11/06	meeting canceled	X	X
	Continued					10/04/06	parties unavailable	X	X
	Continued					01/09/07	requested continuance	X	X
	Continued					04/03/07			
5	City of South Portland	05/18/06	05/18/06	X	07/11/06	X		X	Withdrawn by Appellant
6	LLL, Inc. d/b/a/ Oak Hill Mobil Mart	08/31/06	10/23/06	X	01/09/07	X		X	Withdrawn by Appellant
7	Mid-Coast School of Technology	08/28/06	10/23/06	X	01/09/07	X		X	Withdrawn by Appellant
8	Esther B. Ring	11/29/06	12/15/06		01/09/07				
9	Morse's Patten Irving	11/29/06	12/15/06		01/09/07				
10	Joyce Lovely		12/22/06		01/09/07	X		X	

appeals heard	2
withdrawn	3
carried to 2007	5
appeals processed	10
DEP/SFMO upheld	1
DEP/SFMO overturned	0
Dismissed/Remanded	1

**EXHIBIT B:**  
**Regulatory Agenda 2006**

**90-564**  
**Fund Insurance Review Board**  
2006-2007 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 2006-2007 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, 2006 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, 2006 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, 2006 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, 2006 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 Fund<sup>1</sup>

Cash Balance 07/01/05	\$ 2,726,594.38	\$ 2,726,594.38
Interest Income	\$ 106,148.75	
Net Income	\$ 106,148.75	\$ 106,148.75
Net Balance		\$ 2,832,743.13
Loans Disbursed	\$ .00	
Plymouth Loan Fees <sup>2</sup>	\$ 32,295.52	
Fund Expenses	\$ 10.31	
Net Expenses	\$ 32,305.83	\$ (32,305.83)
Cash Balance		\$ 2,800,437.21
Loans Pending	\$ 49,805.80	\$ (49,805.80)
Net Availability as of 06/30/06		\$ 2,750,631.41

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 during 2007 for a possible final round of disbursements related to the actual cost of remediation.

There has been no new fund activity in the 2006 fiscal year. **Two** loans are still pending, totaling **\$49,805.80**, leaving a **Fund Balance as of June 30, 2006 of \$2,750,631.41**. The initial Record of Decision in the matter of the Plymouth Waste Oil Site was issued by the U.S. Environmental Protection Agency (“EPA”) in October 2006. This is the EPA decision regarding the method of remediating the contamination

<sup>1</sup> Please note that prior to last year’s report, fund activity was reported on a calendar year basis. Beginning last year, however, fund activity is 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 2006 begins July 1, 2005 and closes June 30, 2006.

<sup>2</sup> 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.

related to the site. The Potentially Responsible Parties (“PRPs”) are currently negotiating with the EPA to implement the remedy as a result of which the PRPs will 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 in late fall 2007. With each assessment, there has been new legislation amending the statute to allow additional disbursement for the stated purpose 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 Ground Water Oil  
Clean-up Fund  
Maine Department of Environmental Protection**

**Maine Department of Environmental Protection**  
17 State House Station  
Augusta, Maine 04333-0017

**February 15, 2007**

Contact: Scott D. Whittier, Director, Oil and Hazardous Waste Facilities Division  
287-7674

## 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) 2006 (July 1, 2005– June 30, 2006). A balance of \$5,573,395 was carried forward from FY 2005. Total net income for FY 2006 was \$12,235,652. This does not include the carry forward balance. Net expenditures totaled \$13,471,430.

During the fiscal year 2006, there was a decrease in annual income of \$657,840 and a decrease in expenditures of \$3,073,175 when compared to the 2005 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 last six months of the fiscal year. The net income during FY 2006 reflects this fact and the fact that there were no transfers from the revolving loan program administered by the Finance Authority of Maine (FAME). The surcharge was reinstated during FY 2006, effective January 1, 2006. Additionally in FY 2006, fee refunds to petroleum distributors for oil not stored in Maine totaled \$1,526,008. This represents an increase in fee refunds of approximately \$345,177 when compared to FY 2005.

**TABLE 1**

STATEMENT OF CASH POSITION  
GROUNDWATER OIL CLEAN-UP FUND  
AT JUNE 30, 2006

<b>BALANCE FORWARD (July 1, 2005)</b>	<b>\$ 5,573,394.86</b>
<b>INCOME</b>	<b>\$ 13,761,660.33</b>
Minus Fee Refunds	<b>\$ 1,526,007.96</b>
<b>FAME Cash Payments (FY 2006)</b>	<b>\$ 0</b>
<b>NET INCOME</b>	<b>\$ 12,235,652.37</b>
<b>NET BALANCE</b>	<b>\$ 17,809,047.23</b>
<b>EXPENDITURES</b>	
Personal Services	<b>\$ 3,612,369.65</b>
All Other	<b>\$ 8,243,556.31</b>
Capital	<b>\$ 37,429.68</b>
Indirect Cost Transfers	<b>\$ 1,508,240.00</b>
Other Transfers (Excluding FAME)	<b>\$ 69,834.20</b>
<b>NET EXPENDITURES</b>	<b>\$ 13,471,429.84</b>
<b>CASH BALANCE (6/30/2006)</b>	<b>\$ 4,337,617.39</b>
<b>ENCUMBRANCES (6/30/2006)</b>	<b>\$ 1,290,672.64</b>
<b>INDIRECT COST OBLIGATION (6/30/2006) (untaken)</b>	<b>\$ 53,703.22</b>
<b>NET FUND AVAILABILITY (6/30/2006)</b>	<b>\$ *2,993,241.53</b>

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 State 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, 2006)	627
Total Eligible	563
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2005	278
Total Ineligible	64

**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, 2005, through June 30, 2006, the Department received 20 applications for the coverage of clean up costs. One applicant was determined to be ineligible in FY 2006. This is a decrease of 10 applications compared to the number of applications received in FY 2005. 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, 2006)	2,053
Total Eligible	1,986
Total Ineligible	67

During FY 06, 195 eligible applications were forwarded to the DEP from the Office of State Fire Marshal. This represents a decrease of 16 eligible applicants when compared to the number of applications (211) referred to the Department from the Office of State Fire Marshal in FY 2005. The slight decrease in the number of applicants for the coverage of eligible clean up costs from aboveground storage tanks may be attributed to the mild weather during the winter of 2005 -2006.

**TABLE 4**

**Total Applications (sum of Tables 2 and 3)  
(July 1, 1990 – June 30, 2006)**

Total Received	2,680
Total Eligible	2,549
Total Ineligible	131

D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 20 claims for third party damages against the Ground Water Oil Clean-up Fund.

During fiscal year 2006, the Department completed processing of 14 claims filed against the Ground Water Oil Clean-up Fund and awarded a total of \$22,478.74 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 2006, 11 claims were dismissed, withdrawn or settled without a cash award and 3 claims were processed and the claimants received a cash award. This resulted in a \$7,493 average cash award based on the 3 claims processed that included a cash award. The average cash award to third party claimants for fiscal year 2005 was \$13,887. The average cash award to third party claimants for fiscal year 2004 was \$2,621. The average cash award to third party claimants for fiscal 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.

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 2006, 35,178 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 2006, there were 60 of these tanks newly registered. In calendar year 2005, there were approximately 89 non-conforming tanks registered and removed. In calendar year 2004, there were approximately 121 non-conforming tanks registered and then removed.

Of the 484 underground tanks removed in 2006, 117 of them were bare steel. Currently there are 184 bare steel tanks remaining to be properly removed or abandoned in place. This is a reduction of 99 tanks when compared to last year's report. About 141 of these remaining 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 38,256 underground tanks have been removed. This number includes about 3,024 conforming tanks. Owners of 93 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 4,982 underground oil storage tanks registered and in operation in the State of Maine.

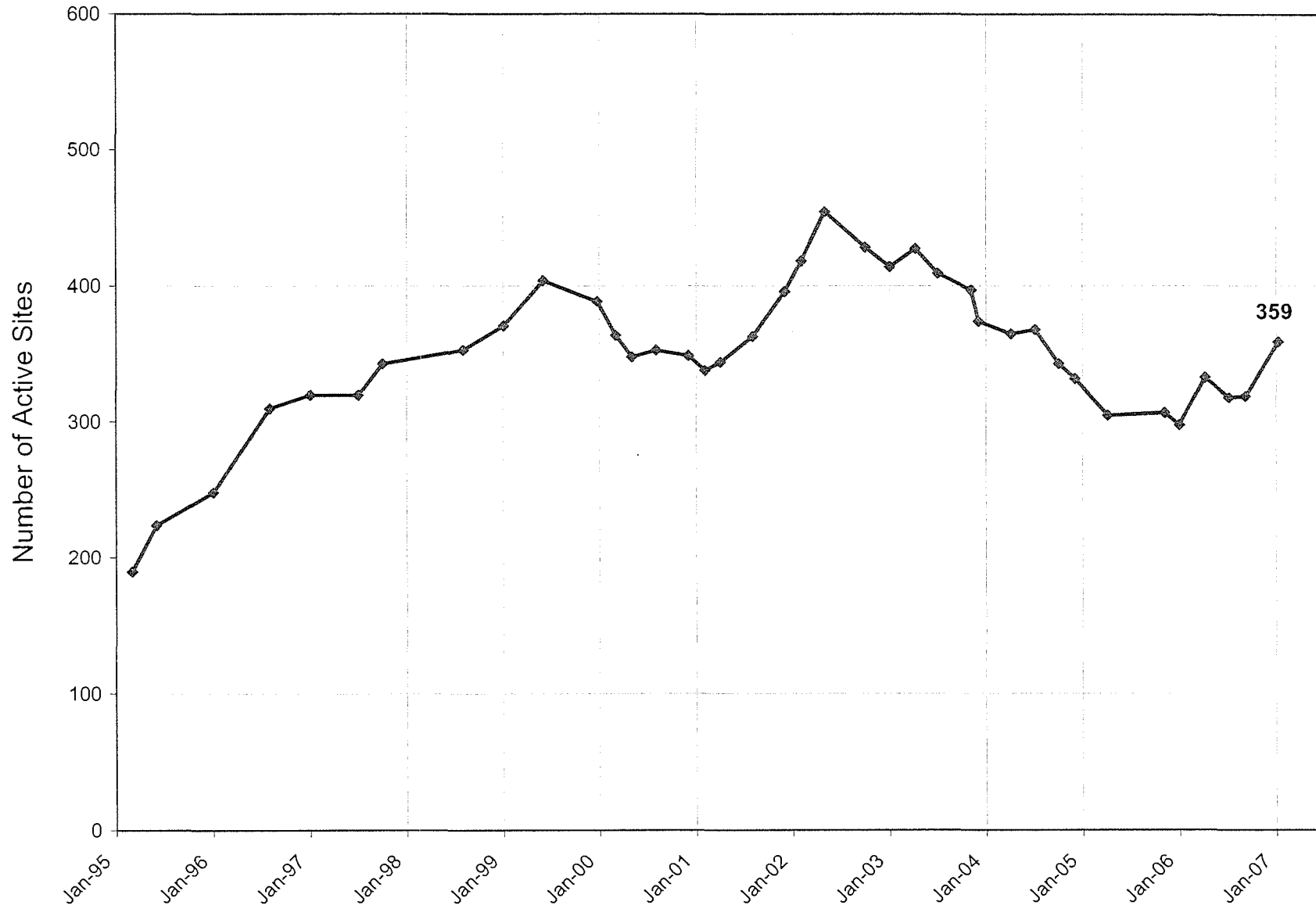
#### Fund Adequacy

During fiscal year 2006 there was a decrease in expenditures of \$3,073,175 and a decrease in annual income of \$657,840 when compared to FY 2005. The surcharge was not in place for the entire reporting period. The surcharge was reinstated effective January 1, 2006, and was in place for the remaining 6 months of the state fiscal year 2006. At the end of the fiscal year, there was a net fund availability of \$2,993,241.

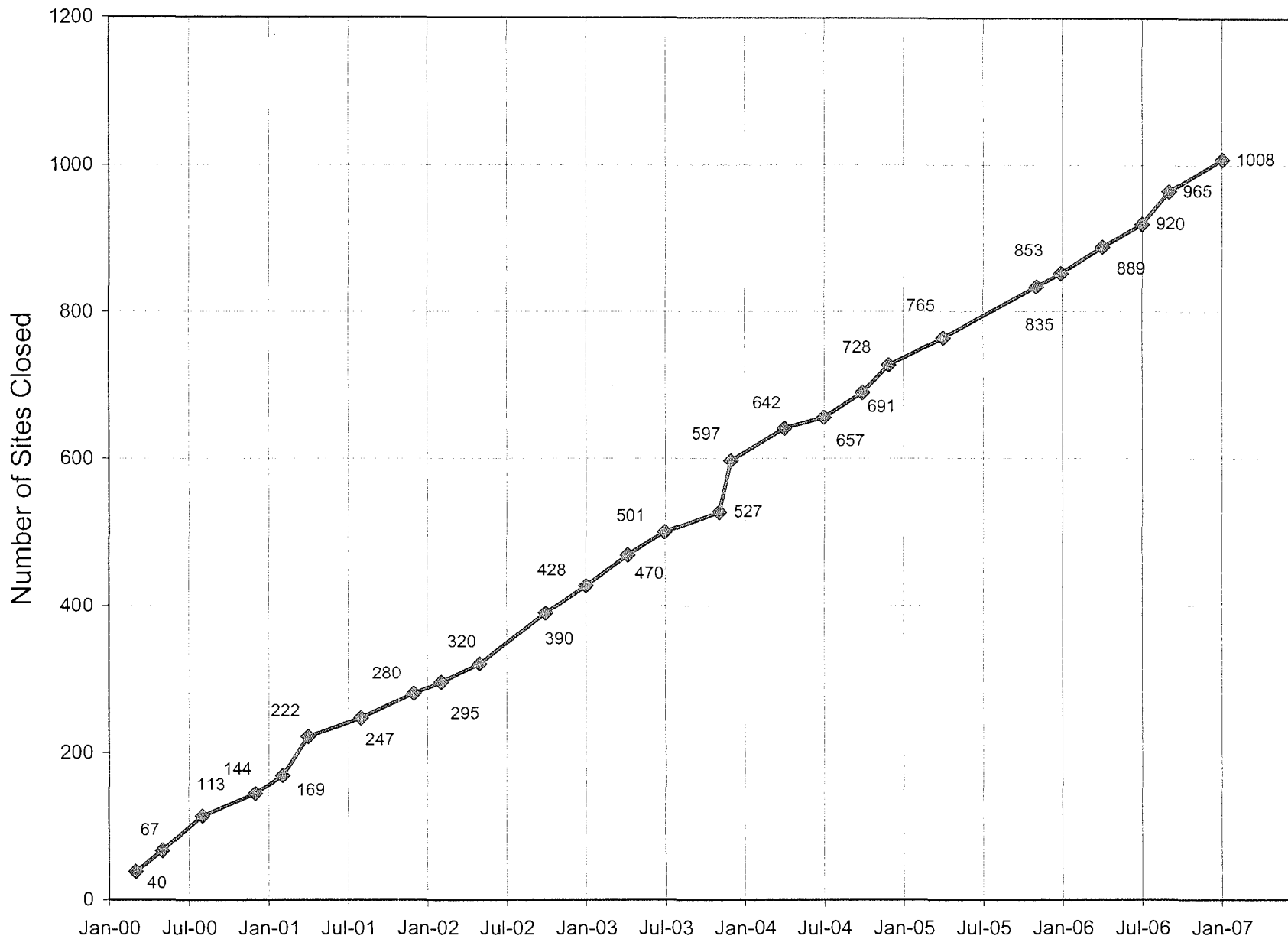
The flexibility provided by the surcharge to increase revenue, periodic transfers of funds from the revolving loan program administered by FAME and close monitoring of revenue and spending should be sufficient to maintain Fund solvency and support the Department's ongoing efforts to address the backlog of sites awaiting cleanup. The backlog of sites needing remedial work has fluctuated from 454 (2002) to 343 (2004) to 307 (2005) to the current number of 359 (2007). Figures 1 and 2 illustrate the number of long term remediation sites that are active and closed. The slight increase in the number of sites requiring long term remedial work may be attributed to better reporting of contaminated sites and an increase in the number of sites being redeveloped through the Voluntary Response Action Program (VRAP). As such, 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.

FIGURE 1  
ACTIVE SITES IN LONG-TERM REMEDIATION



**FIGURE 2**  
**LONG-TERM PETROLEUM REMEDIATION SITES**  
**CLOSED SINCE JANUARY, 2000**



Currently the Department is implementing a multi-tasked approach to help prevent releases, reduce expenditures and maintain Fund solvency. These initiatives are summarized below:

1. Third party inspection: Beginning July 1, 2003, passing annual inspection forms must be filed with the Department for all underground oil storage tanks. In September 2006, 568 Notices of Violation were issued to all non-compliant tank owners for violations of this requirement. By December 31, 2006, compliance by tank owners with the passing annual inspection requirement had reached approximately 92% for 2006. By comparison 412 Notices of Violation were issued for this reason in November 2005.

Compliance with the annual inspection law has gradually improved from 70% by mid year 2004 to 80% by mid year 2005 to approximately 92% as of December 31, 2006. DEP staff continues to use a combination of inspections, outreach and enforcement actions to encourage facility owners to remain in compliance with the annual inspection law.

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 88 installers and 45 inspectors have been certified to date. In March 2006, DEP sponsored a day long training program for certified tank installers and certified tank inspectors. Approximately 155 participants attended, and feedback was positive. Each year, certified installers and inspectors must attend 8 hours of continuing education training programs. The Board of Underground Oil Storage Tank Installers approves of approximately 25 credit hours of training each year.

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 the last 12 months. Additionally, random inspections spread throughout the state were also performed. 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 staff transfers, two inspector positions were vacant for 5 months in FY 2006 and the number of on-site inspections completed by DEP staff during the fiscal year was 341.

Beginning in May 2006, revised checklists were used by DEP inspectors in the Bureaus of Air Quality and the Underground Tanks program to record the results of Stage I and Stage II vapor control equipment 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 being performed at each facility. More information on this effort was submitted as part of a separate report to the Joint Standing Committee on Natural Resources in February, 2006.

3. **AST/UST Replacement:** The Department has continued its contractual relationship with Maine's nine community action agencies for the eighth consecutive year. In March of 2006 the Department agreed to provide the community action agencies \$880,000 for home heating oil tank replacement from April 1, 2006 through March 31, 2007. This is the same amount as the previous contract, which concluded March 31, 2006. The Washington Hancock Community Action Agency (WHCA) continues to serve as the administrative coordinator for the Aboveground Storage Tank (AST) and Piping Replacement program and the Underground Tank Removal Program. For this work, WHCA is paid \$30,705.

From April 2005 through March 2006, approximately 571 non-conforming AST's were removed and replaced at an average cost of about \$1,541. Non-conforming (buried) fuel supply piping was replaced at 16 households at a cost of \$2,762, (Average cost of \$173 per site). No underground storage tanks were removed.

For comparison, during the time from April, 2004 through March, 2005, the Department provided \$750,000 for home heating oil tank replacement. Approximately 563 non-conforming AST's were removed and replaced at an average cost of \$1,331. The increase in average cost of slightly over \$200 per tank can be explained by more stringent specifications and the increase in the price of steel, which caused the oil tanks to be more expensive. Non-conforming (buried) fuel supply piping was replaced at approximately 46 households at a total cost of \$6,127, (Average cost of \$133 per site). Similar to the seventh year, no underground storage tanks were removed.

The Department also partnered with water districts in Old Town, Rumford and Mexico to replace home heating oil tanks inside wellhead/source water protection areas. The three projects spanned both fiscal years 2005 and 2006 and resulted in the replacement of 97 home heating oil tanks. The average cost per residence was approximately \$2,600. This pro-active program is designed to replace sub-standard oil storage tanks at low income households to prevent leaks to the environment. In fiscal year 2005, about \$127,000 was expended and in FY 2006 about \$101,000 was spent on this effort.

Because the houses are located near the source of a municipal drinking water supply, the home heating oil tanks installed in these wellhead protection areas are double wall aboveground tanks that are more expensive than the typical, steel tanks found in people's homes. These tanks are manufactured to meet the Underwriters Laboratory standard UL 2258. The inner polyethylene tank (which will not rust) is surrounded by a sheet metal outer tank.



4. Spill Prevention Control and Countermeasures (SPCC) Program: During 2006, staff in 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 owners/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 site visits, and as new information becomes available from other sources.

The process of incorporating AST data into the Department's existing database for underground storage tank (UST) facilities is ongoing. SPCC program staff entered 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. To date, 248 AST registrations have been entered into the database as a result of both voluntary registrations and those submitted pursuant to 38 M.R.S.A. §563(10).

#### *SPCC technical assistance site visits to individual facilities*

SPCC program staff continued to visit individual facilities in 2006 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. 39 site visits were conducted in 2006, and 25 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 State Legislature passed legislation to close the gap between the standards governing underground piping associated with AST's and similar piping at UST facilities. The law has two major elements. One is 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 was not required to have any leak detection until replaced, and there was no replacement schedule mandated by statute. As a result, some older underground piping at AST facilities could operate legally without leak detection until a leak was discovered, at which point it was then replaced and brought in compliance with all the current requirements of Chapter 691.

In July, 2006, letters were mailed to all known facility owners describing the changes in the law. Information regarding the law changes and the applicable forms were added to the Departments website.

With the new law, effective in August of 2006, all motor fuel AST facilities having underground piping installed prior to June 24, 1991 without leak detection must be brought into full compliance with the leak detection requirements of Chapter 691 by January 1, 2011. The other major element of the law 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 registration and inspection deadlines for all motor fuel facilities except diesel include a registration due by January 1, 2007, and inspection performed by July 1, 2007. Diesel facilities must be registered by January 1, 2009, and inspections must be performed by July 1, 2009.

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. 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 presented its report, "Review of Maine's Oil Discharge Reporting Statutes and Regulations" to the Natural Resources Committee on March 16, 2006. The committee requested additional information, which was provided in an amended report dated March 16, 2006.

7. Legislative Initiative:

Within the Department's "Omnibus" Bill (L.D. 646) for the 123<sup>rd</sup> First Regular Session, the Maine Board of Underground Storage Tank Installers and the Department are proposing to revise requirements for apprenticeship for applicants to become certified underground storage tank installers. At present, the law requires an apprentice to assist, under the supervision of a fully certified installer, six (6) complete facility installations in order to qualify to take the final examination for certification. This provision was enacted in 1989, when the vast majority of underground oil storage facilities in Maine were under a schedule of required removal or replacement. At that time, the required removal/replacement schedule meant that many facilities were being installed. However, since the schedule required all facilities to be in compliance by October 1, 1997, opportunities for apprentices to participate in complete installations have significantly declined since then. At the same time, work involving partial installations increases as the "new" facilities age.

We are proposing that the Legislature grant the Board of Underground Tank Installers rulemaking authority to develop, along with our regulated community, a structure for apprenticeship that is both reasonable and effective.

8. Energy Policy Act of 2005: In August 2005, the U.S. Energy Policy Act of 2005 became effective. A subchapter of the U.S. Energy Policy Act known as the Underground Storage Tank Compliance Act contained numerous provisions that impacts Maine's underground oil storage tank and associated Ground Water Oil Clean-up Fund Insurance program. The requirements of the Act are being implemented by the U.S. Environmental Protection Agency (EPA) through a series of guidance documents. The guidance documents contain requirements for implementation by states, territories and tribes as a pre-requisite to qualify for federal clean-up and program implementation grant awards. The Maine Department of Environmental Protection receives approximately \$800,000 annually from EPA for these programs. Several guidance documents have been issued in draft or final form. The final guidance for creating and implementing requirements to prohibit deliveries to non-conforming motor fuel underground oil storage facilities will require legislative action if Maine is to continue to receive federal funding. The final guidance document is scheduled to be issued in August 2007. The Department will be drafting a legislative proposal for discussion with affected stakeholders over the next 6 months for introduction to the legislature in the fall of 2007.

The guidance documents are being closely monitored by Maine DEP staff. Important issues which impact Maine's programs include; availability of compliance information to EPA and the public via electronic means; prohibiting tank owner employees that are Maine certified installers or inspectors from performing inspections of employee owned tanks; mandatory training programs by state regulatory agencies for underground storage tank operators; state fund soundness assessments; and defining what constitutes a "diversion of state funds". If EPA determines that a diversion has occurred, a state may lose the ability to procure federal grant funding. Depending on the contents of these guidance documents, additional statutory and regulatory changes may be proposed in state fiscal year 08.