

MAINE STATE LEGISLATURE

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



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

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

February 15, 2008

Box 123ra-2nd.

Fund Insurance Review Board

LAW and LEGISLATIVE
REFERENCE LIBRARY
43 STATE HOUSE STATION
AUGUSTA, ME 04333-0043

February 14, 2008

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

I am pleased to present the Joint Standing Committee on Natural Resources with the Fund Insurance Review Board's Annual Report for the fiscal year ending June 30, 2007.

If you have any questions you may contact either Michelle MacKenzie of the Finance Authority of Maine at 620-3541 or me at 542-2059.

Sincerely,



Michael Bonzagni, Chair *man*
Fund Insurance Review Board

Enclosure

Fund Insurance Review Board

c/o Finance Authority of Maine
5 Community Dr. PO Box 949
Augusta, ME 04332-0949

TEL: 207-623-3263
FAX: 207-623-0095
TDD: 207-626-2717

JAN 16 2015

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 15th 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's 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, 2007 and ending December 31, 2007, 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's and FAME's experience in administering this Program through June 30, 2007 (fiscal year basis). 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 Marshall'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	<i>*Appeals panel member</i>

APPEALS ACTIVITIES

During the calendar year ending December 31, 2007, the Fund Insurance Review Board processed a total of seven appeals, four of which were heard by the Appeals Panel of the Fund Insurance Review Board. In one case the Commissioner's decision was upheld; in one case the Commissioner's decision was upheld in part and overturned in part; in one case upon reconsideration, the State Fire Marshal's decision was overturned; one appeal was remanded to the State Fire Marshal's Office. Two appeals were withdrawn by the appellants, and one appeal was carried forward to 2008. In carrying out its responsibilities, the full Board held four business meetings and three meetings of the Appeals Panel during which hearings were conducted. Attached, as **Exhibit A**, is a copy of an analysis of 2007 appeals by case.

REGULATORY CHANGE

The Board filed its Regulatory Agenda on September 14, 2007. 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 2007

FUND INSURANCE REVIEW BOARD - CY 2007 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	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		01/09/07	Fire Marshal Overturned
2	Maritime Energy	9/26/2005	10/5/2005		1/3/2006	4/4/2006	short notice	X	X
						7/11/2006	meeting canceled	X	X
	Continued					10/4/2006	parties unavailable	X	X
	Continued					1/9/2007	requested continuance	X	X
	Continued					4/3/2007		X	Withdrawn by Appellant
3	Esther B. Ring	11/29/2006	12/15/2006		1/9/2007			1/9/2007	Remanded to SFMO
4	Morse's Patten Irving	11/29/2006	12/15/2006		1/9/2007		appellant unable to attend	X	X
								4/3/2007	
5	Joyce Lovely		12/22/2006	N/A	1/9/2007	X		X	Withdrawn by Appellant
6	The Maine Grocer	5/14/2007	5/22/2007		7/17/2007			7/17/2007	DEP Commissioner upheld
7	Dallas Company	9/21/2007	10/4/2007	12/10/2007	1/22/2008		requested continuance		carried to 2009

appeals heard	4
withdrawn	2
carried to 2008	1
appeals processed	7
DEP/SFMO upheld	1.5
DEP/SFMO overturned	1.5
Dismissed/Remanded	1

EXHIBIT B:

Regulatory Agenda 2007

90-564
Fund Insurance Review Board
2007-2008 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) 620-3541. mmackenzie@famemaine.com

EMERGENCY RULES ADOPTED SINCE LAST REGULATORY AGENDA: None

EXPECTED 2007-2008 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, 2007 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, 2007 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, 2007 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, 2007 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

Cash Balance 07/01/06	\$ 2,800,437.21	\$ 2,800,437.21
Interest Income	\$ 157,557.44	
Net Income	\$ 157,557.44	\$ 157,557.44
Net Balance		\$ 2,957,994.65
Loans Disbursed	\$.00	
FAME Admin. Expense ²	\$ 32,565.56	
Fund Expenses	\$ 107.00	
Net Expenses	\$ 32,672.56	\$ (32,672.56)
Cash Balance		\$ 2,925,322.09
Loans Pending *	\$ 49,805.80	\$ (49,805.80)
Net Availability as of 06/30/07		\$ 2,875,516.29
<i>* since withdrawn</i>		

The Plymouth Waste Oil Clean-Up Fund was established in Maine law (10 M.R.S.A. Section 1023-L) and in 10 M.R.S.A. 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 (“EPA”) to prevent use of contaminated groundwater by nearby residents and time-critical removal action costs” when [FAME] determines that certain eligibility criteria have been met. These costs, and the costs of final remediation, are referred to collectively as the “response costs”.

There was no new fund activity in the 2007 fiscal year. There were two loans pending as of June 30, 2007 which have since been withdrawn, leaving an effective **Fund Balance as of June 30, 2007 of \$2,925,322.09.**

The Plymouth Waste Oil Clean-Up Loan Program has been instrumental in protecting the health, welfare and safety of the citizens of the State. More than 40 small businesses, municipalities, and school districts have borrowed from the program to date to pay response costs associated with the Plymouth site. The program is currently closed to new applications, although it is expected to be re-opened during 2008 for a possible final round

¹ Please note that fund activity was previously reported on a calendar year basis but is now 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 2007 begins July 1, 2006 and closes June 30, 2007.

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. Due to a transposition error, FAME Admin. Expense for fiscal year 2007 is overstated by \$270.00. The fiscal year 2008 report will correct the discrepancy by reducing FAME Admin. Expense by this amount.

of disbursements related to the actual and final costs of remediation. With each new assessment of costs, there has been new legislation amending the statute to allow additional disbursement for the stated purpose and to open up the program for applications, as well as amendments to Chapter 318 of the Rules of the Finance Authority of Maine.

The time frame to accomplish complete remediation of the Plymouth site and final payment of response costs is still unknown. Previous activities led to issuance of an initial Record of Decision by the EPA in October 2006. This is the EPA decision regarding the method of remediating the contamination 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 possible that borrowers will seek loans or loan increases from the fund in 2008. This possibility is mitigated, however, by the recent creation of a new, related program to address response costs at Plymouth and various other waste sites, which are further discussed below.

It is expected that the final assessment related to Plymouth will be significant. The Plymouth fund was expected to be valuable in offsetting the impact of the final costs of remediation, although it was also expected that the fund would be inadequate to cover those costs to all existing or new borrowers. However, a major new program passed in the First Regular Session of the 123rd Legislature is also aimed at assisting those responsible for clean up costs. The Waste Motor Oil Disposal Site Remediation Program, created by Public Law 2007, chapter 464, directs FAME to issue up to \$30,000,000 in revenue obligation bonds to pay the response costs of eligible parties at Plymouth and three other waste motor oil disposal sites in Maine. The bond payments will be made with proceeds of a premium on motor oil changes that went into effect on October 1, 2007. (For more information about the Waste Motor Oil Disposal Site Remediation Program, please see the Report to the Joint Standing Committee on Natural Resources prepared and submitted by FAME and the Maine Department of Environmental Protection on January 15, 2008.)

Assuming that all pre-conditions to a bond issuance are met, most response costs of eligible parties at Plymouth would be paid from the bond proceeds instead of with loan proceeds. The Plymouth fund would only be tapped by those parties not eligible under the bond program but possibly still eligible under the loan program. The response costs to be paid with bond proceeds would include repayment to FAME of amounts borrowed under the loan program. As a result, the Plymouth Waste Oil Clean-Up Fund would be substantially replenished. The Waste Motor Oil Disposal Site Remediation Program requires that, when all four waste motor oil disposal sites have been remediated and all eligible response costs paid, amounts remaining in the Plymouth Waste Oil Clean-Up Fund and in the Waste Motor Oil Revenue Fund created with the oil change premiums are to lapse to the Groundwater Oil Clean-Up Fund.

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, 2008

Contact: Scott D. Whittier, Director
Division of Oil and Hazardous Waste Facilities
Phone 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, which requires a report to the joint standing committee of the Legislature with jurisdiction over natural resources matters on the Department of Environmental Protection's (DEP's or Department's) and the Fund Insurance Review Board's (FIRB'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 1 illustrates financial activity in the Ground Water Oil Clean-up Fund for the fiscal year (FY) 2007 (July 1, 2006– June 30, 2007). A balance of \$4,337,617 was carried forward from FY 2006. Total net income for FY 2007 was \$17,013,819. This does not include the carry forward balance. Net expenditures totaled \$16,494,234.

During FY 2007, there was an increase in annual net income of \$5,523,813 and an increase in net expenditures of \$2,847,084 when compared to FY 2006. The surcharge imposed when the balance in the Fund remains below \$5 million for three consecutive months (pursuant to 38 M.R.S.A § 569- A. sub - §5.E was in effect for the entire fiscal year. The net income during FY 2007 reflects this fact. There were no transfers from the revolving loan program administered by the Finance Authority of Maine (FAME) during FY 2007. Lastly, in FY 2007, fee refunds to petroleum distributors for oil not stored in Maine totaled \$2,565,214. This represents an increase in fee refunds of approximately \$1,039,206 when compared to FY 2006. However, as illustrated below, the amount refunded has fluctuated over the past 5 years.

FEE REFUNDS FOR PETROLEUM EXPORTED DIRECTLY OUT OF STATE FROM MAINE'S LICENSED OIL TERMINALS

Fiscal Year 2007	\$2,565,214
Fiscal Year 2006	\$1,526,008
Fiscal Year 2005	\$1,180,831
Fiscal Year 2004	\$2,736,319
Fiscal Year 2003	\$2,362,709

TABLE 1

**STATEMENT OF CASH POSITION
GROUNDWATER OIL CLEAN-UP FUND
AT JUNE 30, 2007**

BALANCE FORWARD (July 1, 2006)	\$ 4,337,617.39
INCOME	\$19,579,033.26
Minus Fee Refunds	\$ 2,565,214.27
FAME Cash Payments (FY 2007)	\$ 0
NET INCOME	\$17,013,818.99
NET BALANCE	\$21,351,436.38
EXPENDITURES	
Personal Services	\$ 3,813,490.78
All Other	\$10,317,671.39
Capital	\$ 39,553.00
Indirect Cost Transfers	\$ 1,768,170.23
Other Transfers (Excluding FAME)	\$ 555,348.24
NET EXPENDITURES	\$16,494,233.64
CASH BALANCE (6/30/2007)	\$ 4,857,202.74
ENCUMBRANCES (6/30/2007)	\$ 1,191,019.29
INDIRECT COST OBLIGATION (6/30/2007) (untaken)	\$ 207,696.45
NET FUND AVAILABILITY (6/30/2007)	\$ 3,458,487.00 *

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 coverage of eligible clean up costs by the Fund. Applications related to underground oil storage facilities are filed with the DEP. Applications for eligibility determinations for aboveground oil storage facilities are filed with the Office of 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, 2007)	648
Total Eligible	584
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2007	299
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 the statute based on a review of applicable compliance information. (See 38 M.R.S.A. § 568-A, sub-§2).

From July 1, 2006 through June 30, 2007, the Department received 21 applications for the coverage of clean up costs. No applicants were determined to be ineligible in FY 2007. This is one more application than the total received by the Department in FY 2006. There are no pending applications from that period.

Note: Discharges that are discovered from bare-steel tanks or associated 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, 2007)	189 *
Total Eligible	176
Total Ineligible	11

* During FY 2007, two applications were reviewed and determined to be incomplete. The two applications were returned to the applicants.

During FY 07, 164 eligible applications were forwarded to the DEP from the Office of State Fire Marshal. This represents a decrease of 31 eligible applicants when compared to the number of applications (195) referred to the Department from the Office of State Fire Marshal in FY 2006. 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 2006 - 2007. During mild winters the Department receives fewer reports of discharges resulting from snow and ice falling from roofs. Falling snow and ice cause releases from cracked or broken fill piping and aboveground tanks that become unstable.

TABLE 4

**Total Applications (sum of Tables 2 and 3)
(July 1, 1990 – June 30, 2007)**

Total Received	837 *
Total Eligible	760
Total Ineligible	75

* Includes two incomplete applications that were returned

D. Administration of Third Party Claims.

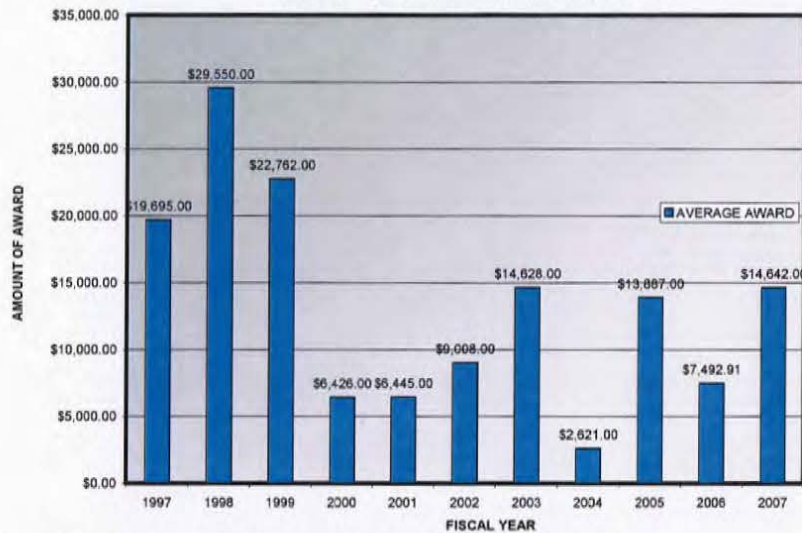
The DEP currently is processing 20 claims for third-party damages against the Ground Water Oil Clean-up Fund.

During fiscal year 2007, the Department completed processing of eight claims filed against the Ground Water Oil Clean-up Fund and awarded a total of \$73,208 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, and 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 FY 2007, three claims were dismissed, withdrawn or settled without a cash award and five claims were processed and the claimants received a cash award. This resulted in a \$14,642 average cash award based on the five claims processed that included a cash award. In 2007, the largest cash award was \$27,924 and the lowest amount awarded was \$110. During fiscal year 2006, 11 claims were dismissed, withdrawn or settled without a cash award and three claims were processed and the claimants received a cash award. Table 5 illustrates the average cash award made to third-party claimants over the last ten years. 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 could also result in a high average award for that year.

TABLE 5

AVERAGE THIRD PARTY DAMAGE CLAIM AWARD



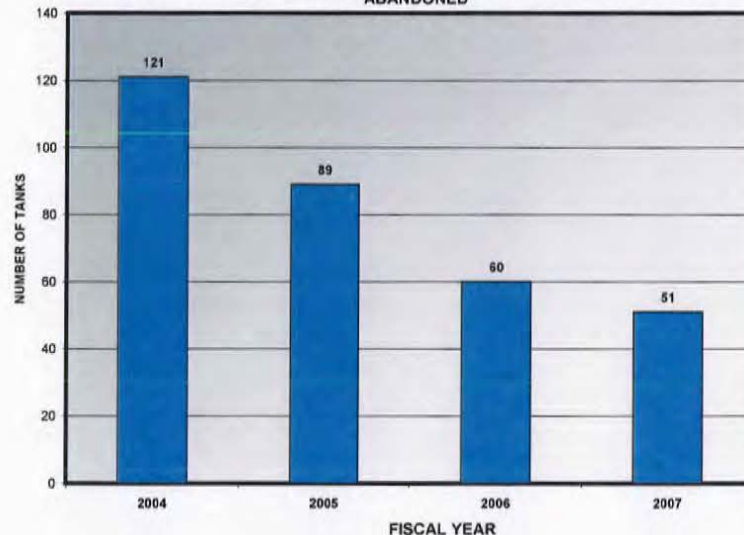
E. Compliance with Tank Abandonment Schedule.

Title 38 M.R.S.A. § 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. Each year, additional bare steel tanks are discovered and registered with DEP prior to proper abandonment. Table 6 illustrates the numbers of tanks discovered, registered and properly abandoned since 2004.

TABLE 6

NUMBER OF BARE STEEL TANKS DISCOVERED, REGISTERED AND PROPERLY ABANDONED



Of the 264 underground tanks removed in fiscal year 2007, 90 were bare steel tanks. Through November 5, 2007, there were 229 bare steel tanks remaining to be properly removed or abandoned in place. About 132 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.

Through November 5, 2007, a total of 38,398 underground tanks have been removed or abandoned in place. This number includes about 3,076 conforming tanks. Owners of 92 of these locations have failed to submit the required site assessment to determine if clean-up actions are necessary. Currently, there are approximately 4,843 underground oil storage tanks registered and in operation in the State of Maine.

F. Fund Adequacy

During FY 2007 there was an increase in net expenditures of \$2,847,084 and an increase in annual net income of \$5,523,813 when compared to FY 2006. The surcharge was reinstated effective January 1, 2006, and was in place for all of fiscal year 2007. At the end of the fiscal year, there was a net fund availability of \$ 3,458,487.

However, after the close of FY 2007 on June 30, 2007, the available cash balance in the fund dropped to a precipitously low amount in December 2007. Between August and December 2007 (during FY 2008), the cash balance dropped from approximately \$5.5 million to \$1.7 million. The drop in the fund balance was the result of the clean-up of a number of grossly contaminated sites in combination with an all-time low of monthly revenues in September 2007. Several sites were the subject of remedial work during FY 2007 where costs approached or exceeded \$1 million. Sites previously used for commercial purposes that are sold for redevelopment are becoming more prevalent as the subject of clean-up eligibility applications to the Fund. This was not common when the oil storage tank insurance program was created. The Department is observing that sites used for retail distribution of petroleum products for decades are the subject of site assessments mandated by the financial guarantors at the time of property transfer or for refinancing purposes. Some site assessments are revealing heavily contaminated sites where no prior report of an oil discharge has been made. Contamination encountered at these sites is often historic, but because Fund eligibility is predicated on the "date of discovery", the Fund is used to clean up decades of petroleum discharges. This trend has resulted in increased expenditures without any corresponding increase in costs to those responsible for the environmental damages. As the Fund's financial resources become strained, it is likely that funding will not be readily available for eligible clean-up activities at redevelopment sites that pose a low risk to the environment and public health.

A number of oversight and control measures have been implemented to maintain the solvency of the Ground Water Oil Clean-up Fund. First, sites that pose a significant and imminent risk to public health and safety will continue to have the highest funding priority. Work on lower priority sites was halted or slowed to allow only those activities required to properly close the sites for the winter season.

Large sum invoices may be paid in installments depending on the current fund balance. Owners of sites requiring remedial work that are paying "first dollar" and depending on reimbursement from the insurance program have been encouraged to coordinate the work and expenditures with the Department to allow both entities to plan a schedule for reimbursement. Owners of these sites have also been informed that expenditures made without consultation with the

Department are made at their own risk. Additional cost controls and measures to improve efficiencies are also being implemented by DEP project managers on a site-by-site basis.

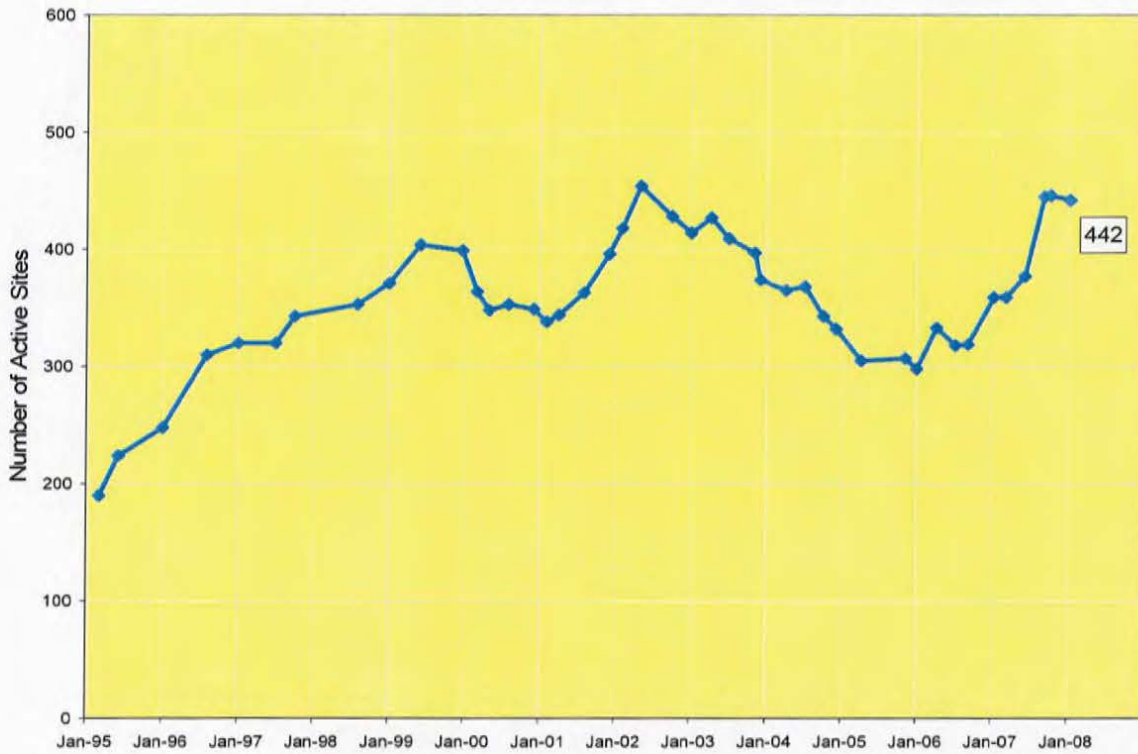
In response to the Fund's financial stress, the Department is evaluating several concepts as possible means to improve the long term financial health and solvency of the Fund, including:

- closer oversight including "peer review" of DEP-lead clean-up projects;
- an increase in the standard and conditional deductibles assessed to applicants for eligible clean up costs;
- decreasing eligible coverage allowances, particularly at sites with historic contamination that pre-date the inception of the fund as well as at sites where no leak detection or pollution prevention measures have been implemented;
- providing for reimbursement to the fund for costs incurred at sites where discharges are the result of negligent acts;
- providing for cost recovery at sites where the contamination is caused by overfills and spills during product transfers where there is insurance coverage mandated by U.S Department of Transportation requirements; and
- contracting with a consultant that specializes in "insurance archeology" to determine if past expenditures may be recoverable.

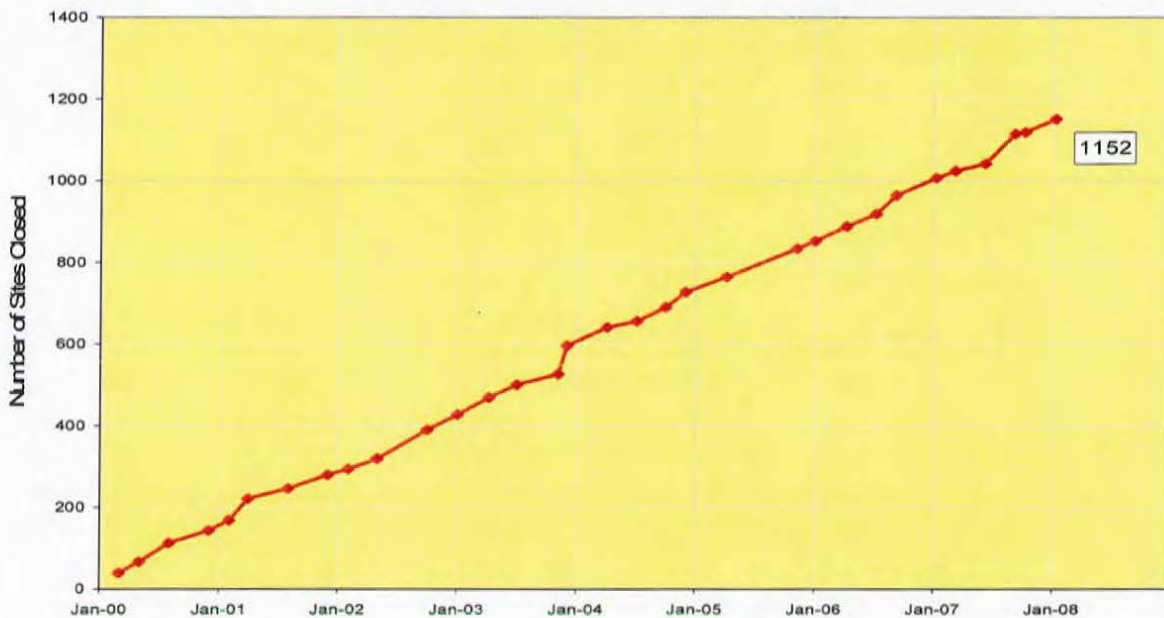
The Department realizes that legislative action is likely required if any of these concepts are further developed.

The backlog of sites needing remedial work has fluctuated from 454 (in 2002) to 343 (in 2004) to 307 (in 2005) to 359 (in 2006) and is currently at 442 (as of January 2008). Figures 1 and 2 illustrate the number of long-term remediation sites that are active and closed. As such, prioritizing remedial sites and performing clean up to concentrations commensurate with the degree of risk will remain an important function of the DEP. Revenue and expenditures must also be carefully monitored to ensure they remain in alignment. The backlog includes sites that are subject to stringent clean-up standards that take more time to fully implement remedial measures, sites where monitoring continues in order to demonstrate clean-up standards are consistently achieved over time before monitoring is stopped, sites with new releases including operating facilities and sites undergoing redevelopment or ownership transfer where old releases are discovered for the first time.

ACTIVE SITES IN LONG-TERM REMEDIATION



LONG-TERM PETROLEUM REMEDIATION SITES CLOSED SINCE JANUARY, 2000



The flexibility provided to increase revenue through the use of the surcharge, periodic transfers of funds from the revolving loan program administered by FAME and close monitoring of revenue and spending in combination with administrative and procedural changes should be sufficient to maintain

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

1. Third party inspections:

Beginning July 1, 2003, annual inspection forms indicating a passing inspection must be filed with the Department for all underground oil storage tanks. The annual inspection must be completed by an installer or inspector certified by the Maine Board of Underground Storage Tank Installers (BUSTI) following passage in 2001 of "An Act to Improve the Inspection and Maintenance of Underground Oil Storage Tanks." A total of 85 installers and 50 inspectors have been certified as of October, 2007. Each year the DEP sponsors a day-long training program for certified tank installers and certified tank inspectors. On April 5, 2007, approximately 115 participants attended that day's training program. Each year, certified installers and inspectors must attend 8 hours of continuing education training programs. BUSTI approves approximately 25 credit hours of training each year that can be used for this purpose.

In November 2007, the Department issued Notices of Violation (NOVs) to 346 non-compliant tank owners for violations of the inspection requirement. (For comparison, 568 NOVs were issued in September 2006 and 412 NOVs were issued 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. The compliance rate with the July 1, 2007 deadline is approximately 92.7%. Department staff continue to use a combination of inspections, outreach and enforcement actions to encourage facility owners to remain in compliance with the annual inspection law.

2. Increased DEP field presence:

DEP staff maintains a strong field presence through the performance of compliance inspections across the state. In federal fiscal year (FFY) 2007 (October 1, 2006 - September 30, 2007) Department staff completed a record number of inspections (530). In FFY 2007, inspection efforts targeted facilities for which no passing annual compliance inspection was submitted in the last 12 months or where tank ownership had changed. Additionally, random inspections were also performed throughout the state. 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 and vacancies in FY 2006, the number of on-site inspections completed by DEP staff during the prior fiscal year was 341.

Department staff from the Bureau of Remediation and Waste Management as well as certified inspectors and installers record the results of "stage 1" vapor control equipment during inspections. Staff from the Department's Bureau of Air Quality as well as certified inspectors and installers oversee "stage II" vapor control equipment inspections and testing.

3. Aboveground Storage Tank (AST)/Underground Storage Tank (UST) Replacement:

The Department has continued its contractual relationship with Maine's nine community action agencies for the ninth consecutive year. In March 2007, the Department provided \$880,000 from the Fund for home heating oil tank replacements. This is the same amount as the previous contract, which concluded on March 31, 2007. 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.

From April 2006 through March 2007, approximately 498 non-conforming ASTs were removed and replaced at an average cost of about \$1,767 each. Non-conforming (buried) fuel supply piping was replaced at 17 households at a cost of \$2,437 (average cost of \$143 per site). Five underground storage tanks were removed at single family residences of low-income owners.

For comparison, from April, 2005 through March 2006, the Department also provided \$880,000 for home heating oil tank replacement. Approximately 571 non-conforming AST's were removed and replaced at an average cost of \$1,541 each. Non-conforming (buried) fuel supply piping was replaced at approximately 16 households at a total cost of \$2,762, (average cost of \$173 per site). The increase in average cost of slightly over \$200 per tank can be explained by more stringent specifications, specifically the requirement that outdoor tanks be painted at the factory with a high quality, durable coating.

The Department also partnered with water districts in Mexico and Pittston to replace home heating oil tanks located within wellhead or source water protection areas. These multi-year projects resulted in the replacement of 46 home heating oil tanks. The average cost per residence was approximately \$3,000. This proactive program is designed to replace substandard oil storage tanks at low income households to prevent leaks to the environment. In FY 2006, about \$80,000 was expended and in FY 2007 about \$17,000 was spent on this effort. The projected amount to be spent in FY 2008 is \$41,000. The apparent cost differential is equipment-related. Because the houses are located near the source of a public drinking water supply, the home heating oil tanks installed in these wellhead protection areas are double-walled aboveground tanks that are slightly more expensive than the typical single-walled steel tanks more commonly found in 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, conducted SPCC technical assistance site visits, provided educational articles for the Department's "Tanks in Maine" newsletter, and provided spill prevention and control information to facility owners/operators and consultants upon request.

To date, 310 AST registrations have been entered into the DEP's tanks database as a result of both voluntary registrations and those submitted pursuant to 38 M.R.S.A. §563, sub-§10. SPCC program staff continued to visit individual facilities in 2007 to provide technical assistance for spill prevention and control, to facilitate SPCC planning, and to enforce the DEP's rules for underground piping where necessary. DEP performed 41 site visits and reviewed 15 SPCC plans as part of those site visits in 2007; this compares to 39 site visits and review of 25 SPCC plans in 2006.

5. Aboveground Storage Tanks (ASTs):

In an effort to further reduce significant discharges to groundwater and surface water bodies, legislation was adopted to close the gap between the standards governing underground piping associated with ASTs and similar piping at UST facilities (Public Law 2005, chapter 491). This law has two major elements:

- The phased requirement to retrofit leak detection on piping at an estimated 300 to 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 into compliance with the current requirements of DEP Chapter 691 rules. Under the new law, effective August 2006 all motor fuel AST facilities with underground piping without leak detection installed prior to June 24, 1991 must be brought into full compliance with the leak detection requirements of DEP Chapter 691 rules by January 1, 2011.
- The requirement for motor fuel AST facilities with underground piping to be registered with the Department and a requirement that the facility owner submit annual underground piping inspection reports. The registration and inspection deadlines for all motor fuel facilities except diesel included a registration due by January 1, 2007, and an annual passing inspection performed by July 1, 2007. Diesel facilities must be registered by January 1, 2009, and inspections must be performed by July 1, 2009.

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 DEP's website.

Through December 7, 2007 approximately 127 facilities containing motor fuel with underground piping were registered and entered into the Department's database.

6. Oil Spill Reporting Survey and Focus Group:

In 2005, at the request of the Legislature's Joint Standing Committee on Natural Resources, DEP staff convened a focus group to review oil spill reporting requirements and possible alternative regulatory proposals. The DEP presented its report, "Review of Maine's Oil Discharge Reporting Statutes and Regulations" to the Committee in March 2006. The Committee requested additional information, which was provided in an amended report. In response to the report and ensuing public debate, the 123rd Legislature enacted Resolves 2007, chapter 99 which required the DEP to establish guidance concerning the use of memoranda of agreement for the reporting of oil spills. The Resolve further required the DEP to undertake education and outreach efforts to small aboveground oil storage and handling facilities and timber harvesting operations concerning oil discharge reporting requirements. In 2007, the DEP conducted 7 formal education and outreach efforts for these facilities, and over 400 persons attended. A guidance document describing the standard terms of a memorandum of agreement, eligibility criteria and the approval process was developed for distribution to interested parties. The DEP has entered into 14 memoranda of agreement that are in effect using this process.

7. Legislative Initiative/ U.S. Energy Policy Act of 2005:

In August 2005, the U.S. Energy Policy Act of 2005 (EPAAct) became effective. A subchapter of the EPAAct known as the Underground Storage Tank Compliance Act contained numerous provisions that impact Maine's underground oil storage tank program and the associated Fund insurance program. The EPAAct contains requirements that states, territories and tribes must implement to qualify for federal clean-up and program implementation grant awards. The Maine DEP receives approximately \$800,000 annually from EPA for these programs.

In response to EPAct requirements, the DEP proposed legislation in 2008 (LD 2072) which would:

- Authorize the DEP to develop a training program for underground oil storage tank operators;
- Address the requirement that prohibits tank owners from using employees that are certified installers or inspectors from performing an annual inspection;
- Authorize the DEP to affix a "red tag" to the fill pipe of an underground that is not in compliance, thereby prohibiting further deliveries and when there is an imminent threat of release prohibiting further operation of the tank until compliance is achieved. This proposal does provide that tank owners be provided a reasonable opportunity to correct any violation(s) before an administrative order is issued.
- Require that passing annual inspection reports be provided to the DEP within 30 days of completion; and
- Clarify DEP's ability to request information concerning petroleum releases from any person believed to be a responsible party.

Additional statutory and regulatory changes are likely to be proposed in 2009.