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

**February 15, 2009**

**MAY 22 2009**

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'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, 2008 and ending December 31, 2008, 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, 2008 (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 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 \*

Richard McCarthy, SFMO

Mark Hyland, DEP

*\*Appeals panel member*

## **APPEALS ACTIVITIES**

During the calendar year ending December 31, 2008, the Fund Insurance Review Board processed a total of five appeals, one of which was heard by the Appeals Panel of the Fund Insurance Review Board. In that case the Commissioner's decision was upheld. Three appeals were withdrawn by the appellants. In carrying out its responsibilities, the full Board held four 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 2008 appeals by case.

## **REGULATORY CHANGE**

The Board filed its Regulatory Agenda on June 27, 2008. 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 2008**

**FUND INSURANCE REVIEW BOARD - 2008 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	Dallas Company	09/21/07	10/04/07	12/10/07	01/22/08	03/22/08	request by appellant's attorney	X	Withdrawn / Settled
					03/22/08	06/03/08	SFMO / DEP unavailable	X	
					06/03/08		close to settlement	X	
2	Robert & Karen Veilleux	01/10/08	01/23/08	01/10/08	03/22/08	06/03/08	no quorum	X	SFMO decision upheld
					06/03/08			06/03/08	
3	Total Management Services, LLC	05/09/08	05/16/08	05/21/08	06/03/08	09/16/08	appellant unavailable	X	Withdrawn by Appellant
					09/16/08			X	
4	Webber Energy Fuels	06/03/08	06/13/08	07/28/08	09/16/08			09/16/08	
						12/02/08	hearing to be continued		
						01/06/09	unavailability of members on 12/2/08		
5	Irving Oil Corp	06/23/08	06/27/08	07/01/08	09/16/08			X	Withdrawn by Appellant

appeals heard	1
withdrawn	3
carried to 2009	1
appeals processed	5
DEP/SFMO upheld	1
DEP/SFMO overturned	0
Dismissed/Remanded	0

**EXHIBIT B:**

**Regulatory Agenda 2008**

**90-564**  
**Fund Insurance Review Board**  
2008-2009 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 2008-2009 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, 2008 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, 2008 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, 2008 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, 2008 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 07/01/07	\$ 2,925,322.09	\$ 2,925,322.09
Interest Income	\$ 137,907.31	
Net Income	\$ 137,907.31	\$ 137,907.31
Net Balance		\$ 3,063,229.34
Loans Disbursed	\$ .00	
FAME Admin. Expense <sup>2</sup>	\$ 33,295.02	
Fund Expenses	\$ 1,865.26	
Net Expenses	\$ 35,160.28	\$ ( 35,160.28)
Cash Balance (6/30/08)		\$ 3,028,069.12

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, oversight costs of the United States and the State, remedial action costs and time-critical removal action costs” when [FAME] determines that certain eligibility criteria have been met. These costs are referred to collectively as the “response costs”.

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. 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 program is currently closed to new applications.

There was no new fund activity in the 2008 fiscal year. The **Fund Balance as of June 30, 2008 was \$3,028,069.12**. The program was opened up to new applications for a brief period in 2008 in anticipation of the possible need by borrowers for funds to pay remedial action costs. That possibility was eventually offset by the implementation of the Waste Motor Oil Disposal Site Remediation Program discussed below. However, a few new borrowers applied to the program during this time for funds to pay other eligible costs. Those loans (in the total amount of \$243,671.39) did not disburse until fiscal year 2009 and will be reflected in a subsequent report.

<sup>1</sup> Please note that fund activity is reported 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 2008 begins July 1, 2007 and closes June 30, 2008.

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

It appears that final remediation of the Plymouth site could occur in the near future. 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 while it was anticipated that borrowers would seek loans or loan increases from the fund at such time as the remedy is implemented, this possibility is mitigated by the Waste Motor Oil Disposal Site Remediation Program, which is further discussed below.

It is expected that the final assessment of costs 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, the Waste Motor Oil Disposal Site Remediation Program passed in the First Regular Session of the 123<sup>rd</sup> Legislature is also aimed at assisting those responsible for clean up costs. This new program, created by Public Law 2007, chapter 464 (10 M.R.S.A Sections 1020 and 1020-A), 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 and which was converted to a premium on the wholesale distribution of certain motor vehicle oil beginning August 1, 2008. (For other 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 premiums) are to lapse to the Groundwater Oil Clean-Up Fund.



**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, 2009**

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

PART II

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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) 2008 (July 1, 2007 – June 30, 2008). A balance of \$4,857,203 was carried forward from FY 2007. Total net income for FY 2008 was \$16,829,032 including the carry forward balance. Net expenditures totaled \$19,212,983.

During the fiscal year 2008, there was a decrease in annual income of \$184,787 and an increase in expenditures of \$2,718,748 when compared to the 2007 fiscal year. The main sources of income are fees on each barrel of oil transferred into Maine by ship, road or rail.<sup>1</sup> The base fees are 38¢ per barrel of gasoline, 19¢ per barrel of most other refined petroleum products and 4¢ per barrel of #6 oil. Additionally, the Fund Insurance Review Board (FIRB) has adopted a rule<sup>2</sup> imposing a surcharge on that fee when the balance in the Fund remains below \$5 million dollars for three consecutive months. The surcharge of 20¢ per barrel of gasoline and 10¢ per barrel of other petroleum products was in effect for the entire 12-month period (and has been the case since January 1, 2006).

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<sup>1</sup> See 38 MRSA §569-A, sub-§5.

<sup>2</sup> See chapter 4 of the rules of the Fund Insurance Review Board, 90-564 CMR 4, as amended effective November 24, 2001.

The net fund income during FY 2008 includes the transfer of \$1 million into the fund from the Revolving Loan Account in January, 2008 and fee refunds totaling \$2,353,925. The Revolving Loan Account is administered by the Finance Authority of Maine (FAME). The transfer from the Revolving Loan Account was authorized by the Fund Insurance Review Board. A person who paid fees on oil offloaded at a marine oil terminal is entitled to a refund if the oil subsequently is exported without ever being stored in an aboveground or underground oil storage tank.<sup>3</sup> Refunds during FY 2008 decreased by \$211,289 compared to FY 2007. The amount refunded for each of the past 6 years is listed below.

FEE REFUNDS FOR PETROLEUM EXPORTED DIRECTLY OUT OF STATE FROM  
MAINES LICENSED OIL TERMINALS

Fiscal Year 2008	\$2,353,925
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

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<sup>3</sup> See 38 MRSA §569-A(7) and chapter 685 of department rules, 06-096 CMR 685.  
Adm fund 08 part II

TABLE 1

STATEMENT OF CASH POSITION  
GROUNDWATER OIL CLEAN-UP FUND  
AT JUNE 30, 2008

BALANCE FORWARD (July 1, 2007)	\$ 4,857,203
INCOME	\$ 19,182,957
Minus Fee Refunds	- \$ 2,353,925
NET INCOME	\$ 16,829,032
NET BALANCE	\$ 21,686,235
EXPENDITURES	
Personal Services	\$ 3,698,278
All Other	\$ 13,643,608
Capital	\$ 45,208
Indirect Cost Transfers	\$ 1,469,666
Other Transfers (Excluding FAME)	\$ 356,223
NET EXPENDITURES	\$ 19,212,983
CASH BALANCE (June 30, 2008)	\$ 2,473,252
NET OBLIGATIONS	\$ 1,597,604
NET FUND AVAILABILITY (June 30, 2008)	\$ 875,648*

NOTES:

- "INCOME" INCLUDES FEES, INTEREST, REIMBURSEMENTS, FINES AND MISCELLANOUS INCOME.
- OTHER TRANSFERS INCLUDES TRANSFERS TO OTHER STATE AGENCIES, AND INTERNAL TRANSFERS TO OTHER ACCOUNTS
- EXPENDITURES INCLUDE ADJUSTMENTS TO BALANCE FORWARD INCOME (CREDIT TO EXPENSES).
- THE COLLECITON OF FBES IS SUSPENDED WHEN THE FUND BALANCE REACHES \$12,500,000.
- NET OBLIGATIONS INCLUDES ENBUMBRANCES AND INDIRECT COST OBLIGATIONS (UNTAKEN)

\*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 provide the statistics for eligibility determinations of applications for coverage of clean up costs under the Fund Insurance Program. Under this program, owners and operators of oil storage tanks that have suffered a discharge may apply to the fund for coverage of cleanup costs up to \$1 million per incident.<sup>4</sup> 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.

TABLE 2

Applications to the DEP for coverage of clean-up costs for underground oil storage facilities.

Total Received (July 1, 1990 - June 30, 2008)	664
Total Eligible	599
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2008	314
Total Ineligible	65

Note: Prior to September 28, 1995, owners and operators of oil storage tanks were eligible for Fund coverage only 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 owners and operators are eligible for coverage irrespective of their compliance status but are subject to "conditional deductibles" for each instance of non-compliance. The deductible amounts are set in statute. See 38 M.R.S.A., § 568-A (2).

From July 1, 2007, through June 30, 2008, the Department received 16 applications for the coverage of clean up costs. One applicant was determined to be ineligible in FY 2008. This is an increase of 5 applications compared to the number of applications received in FY 2007. There are no pending applications from that period.

Note: Maine law required all bare-steel underground tanks and associated underground piping to be removed by October 1, 1998. Costs associated with discharges from such tanks are no longer eligible for Fund coverage. (See section E of this report).

TABLE 3

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

Total Received (June 16, 1993 - June 30, 2008)	2,553
Total Eligible	2,459
Total Ineligible	94

<sup>4</sup> See 38 MRSA §568-A.  
Adm fund 08 part II

During FY 08, 268 eligible applications were forwarded to the DEP from the Office of State Fire Marshal. This represents an increase of 104 eligible applicants when compared to the number of applications (164) referred to the Department from the Office of State Fire Marshal in FY 2007. 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 2007 -2008 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 continued to initiate reimbursement actions for cleanups 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 State Fire Marshal during FY 08 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, 2008)

Total Received	3,217
Total Eligible	3,058
Total Ineligible	159

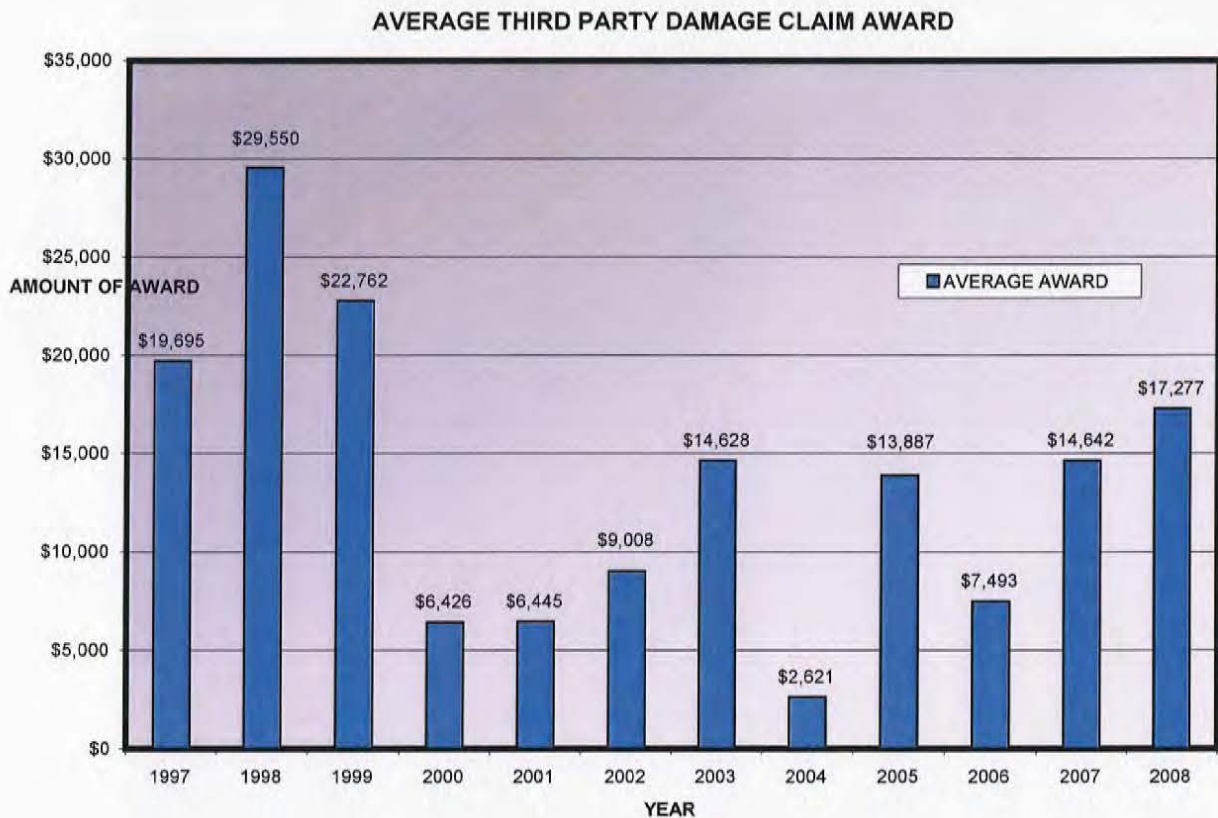
D. Administration of Third Party Claims.

The Department of Environmental Protection currently is processing 17 claims against the Ground Water Oil Clean-up Fund for coverage of damages to third parties. During FY 08, the Department completed processing of 4 claims filed and awarded a total of \$69,106 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 without filing a formal claim. Claims must be filed however prior to the award of any cash settlement. Cash settlements can include compensation for damage to personal and real property, operation and maintenance subsidies for water treatment systems, loss of income and medical expenses related to discharges of oil. Remedial costs associated with third party claims are calculated separately as clean up costs.

No claims were dismissed, withdrawn or settled without a cash award during FY 08. The average award for the 4 claims that were settled was \$17,277. The average cash award to third party claimants in FY 07 was \$14,642. Figure 1 illustrates the average cash award to third party claimants from 1997 through 2008. The average 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



E. Compliance with Tank Abandonment Schedule.

Maine law at 38 M.R.S.A. §563-A requires all non-conforming underground oil storage facilities (i.e., 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. The deadlines for abandonment (usually removal) of most non-conforming tanks ranged from October 1, 1989 to October 1, 1997 depending on tank age and proximity to drinking water supplies including sand and gravel aquifers. The final deadline for tanks owned by municipalities and school administrative districts was October 1, 1998.

As of December 2008, 35,371 bare steel tanks have been properly removed or abandoned in place. This includes 74 non-conforming tanks which were removed in 2008.

Currently there are about 200 bare steel tanks remaining to be properly removed. These tanks are prohibited from receiving deliveries of product pursuant to 38 M.R.S.A. § 563-A (1-D). 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, about 38,660 underground tanks have been removed, including 3,289 conforming tanks. Owners of 106 of these tanks have failed to submit the required site

assessment. The site assessment is needed to determine if clean-up actions are necessary. The Department has issued a Notice of Violation to each owner requesting a site assessment be performed and submitted. Additionally, 1,300 tanks were granted permission to be abandoned in place. Hence, approximately 39,960 underground tanks have been removed or permitted to be abandoned in place. Currently, there are 4,468 conforming underground oil storage tanks registered and in operation in the State of Maine.

#### F. Remediation Sites

The Fund was established to “provide for the investigation, mitigation and removal of discharges or threats of discharge of oil from aboveground and underground storage facilities.”<sup>5</sup> Sites where such discharges pose a significant and imminent risk to public health and safety continue to be the highest funding priority. Work on lower priority sites is carried out as resources allow while maintaining a sufficient fund balance to deal with future emergency releases that threaten public health and sensitive geologic areas.

The Department has observed that the fund increasingly is being sought as a source of funding to clean up contaminated commercial property that is being sold or has been sold for redevelopment. This usage was not anticipated when the Fund Insurance Program was created in 1990 to help small businesses with retail gasoline sales meet federal financial assurance requirements, thereby enabling them to stay in business.

Now, as these businesses close and the property is sold for other uses, the buyer is often eligible for Fund coverage and the cost of cleaning up any residual oil contamination. Site assessments are typically made a condition of the property transfer by the lending institution involved in the transaction. Thus, the Fund increasingly is being used to help new owners clean up the site for redevelopment.

There is nothing illegal about this practice. However, some of these assessments are revealing heavily contaminated sites even where there has been no prior report of an oil discharge. In other cases, post 1990 discharges are discovered to be co – mingled with historic releases. Because eligibility is predicated on the "date of discovery", the Ground Water Oil Clean up Fund is liable even though the discharges may have occurred long ago. This trend has significantly increased Fund expenditures without serving the underlying policy purpose for which the Fund Insurance Program was established.

When the Fund is used in this manner, it functions as a brownfields redevelopment fund in addition to an insurance program. Brownfields redevelopment is a legitimate public policy goal but it is not a goal that the Legislature articulated when it originally established the Fund Insurance Program. As the number of sites eligible for Fund coverage increases and 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.

The backlog of sites needing remedial work has fluctuated as illustrated in Table 5 from 454 (2002) to 343 (2004) to 307 (2005) to 359 (2006) and is currently at 494 (January, 2009). The backlog includes sites that are subject to stringent clean up standards (and therefore take

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<sup>5</sup> See 38 MRSA §561.  
Adm fund 08 part II

more time to fully remediate) and sites where monitoring continues in order to assess the success of clean up work already carried out.

TABLE 5

Number of Sites Needing Remedial Work

January	2009	494
January	2008	442
January	2006	359
January	2005	307
January	2004	343
January	2002	454

Figure 2 illustrates the upward trend in the number of active, long term remediation sites. As this number continues to grow, prioritizing the sites and cleaning them up to levels commensurate with the degree of risk they pose will remain an important function for the Department. Revenue and expenditures will have to be carefully monitored to ensure they remain in alignment.

**Figure 2**  
**ACTIVE SITES IN LONG-TERM REMEDIATION**

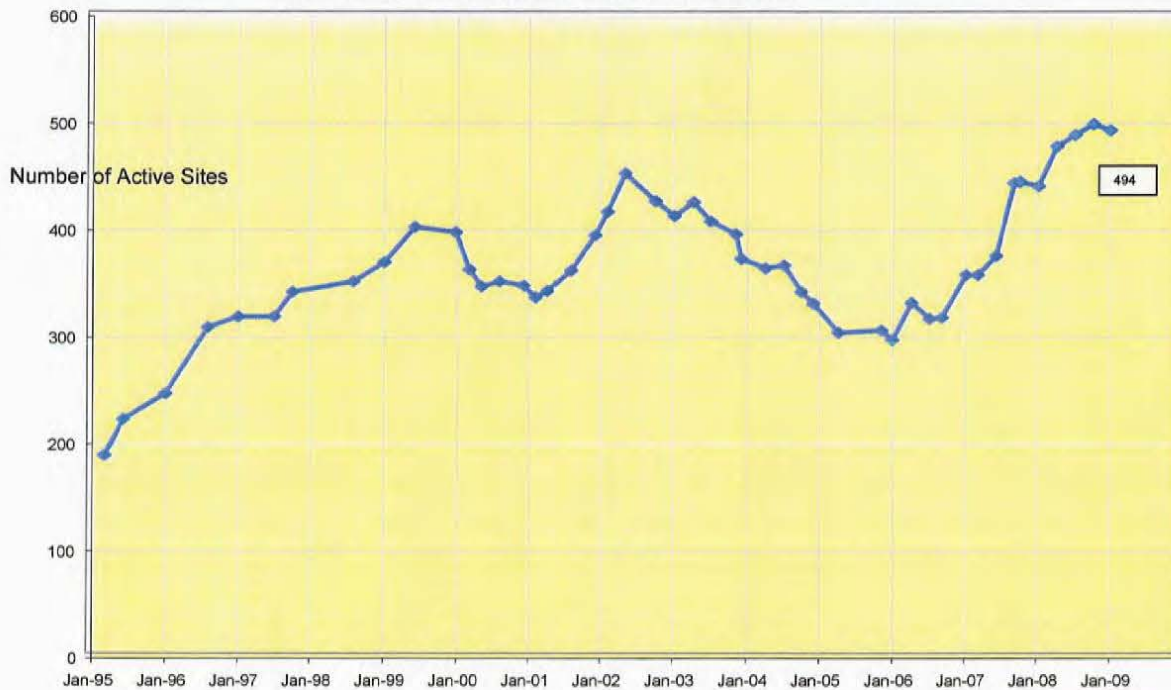


Figure 3 illustrates the make-up of the sites subject to long term cleanup activities by sorting the sites according to the predominant petroleum product released. Data from 1999 through calendar year 2008 is provided. Sites contaminated by fuel oil and kerosene account for 895 of the 1,398 sites (64%).

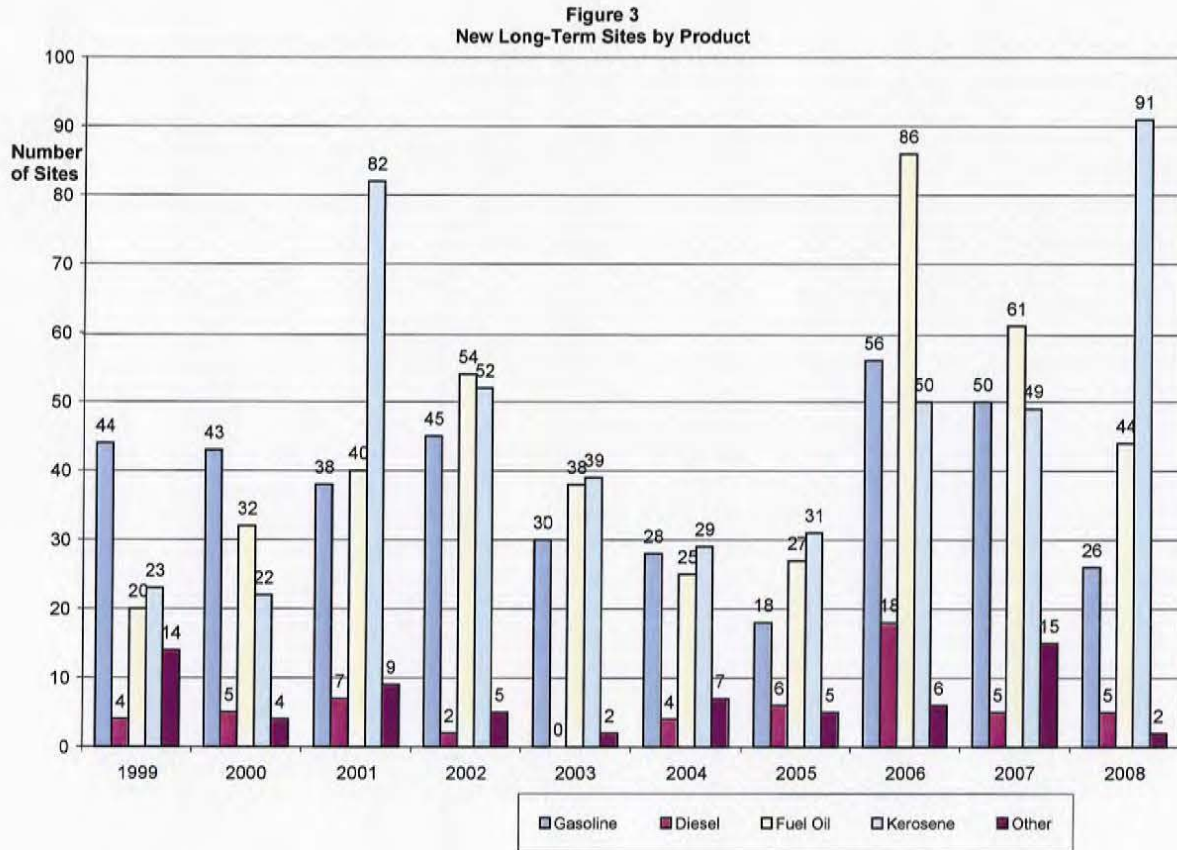
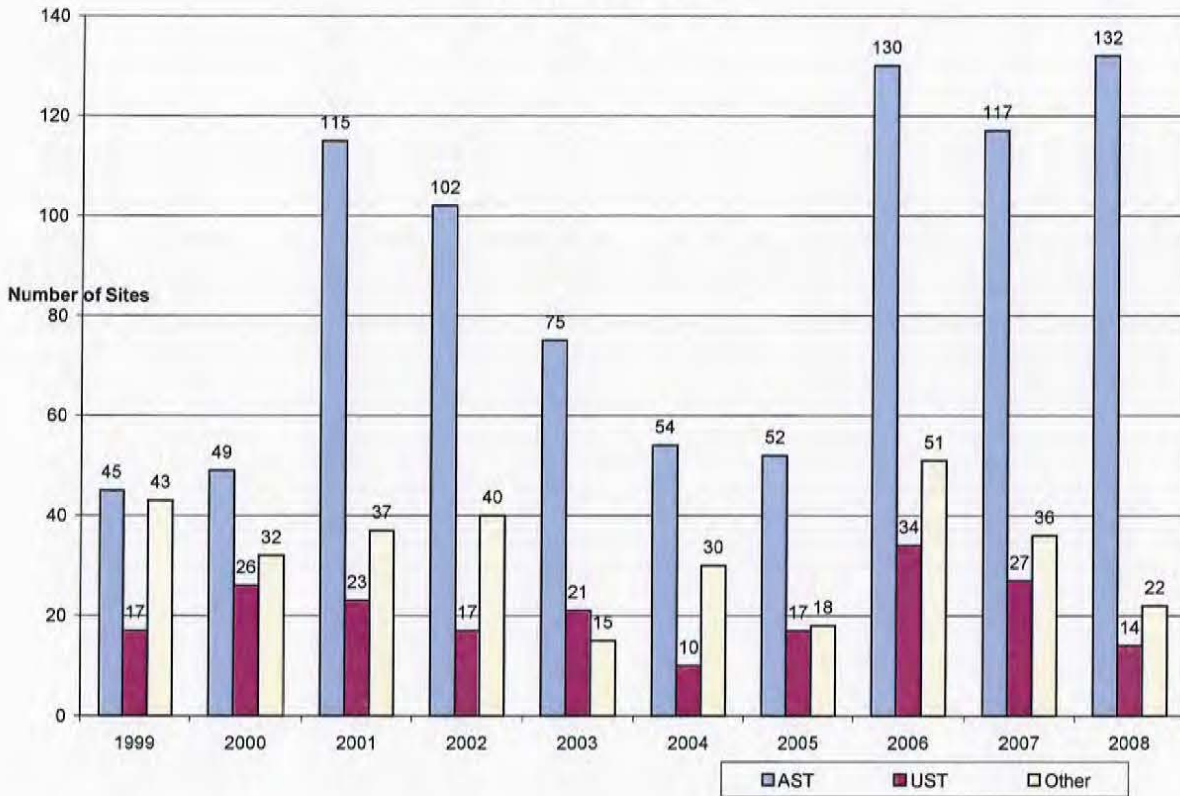


Figure 4 illustrates the make-up of sites subject to long term cleanup activities by sorting the sites according to the source or type of storage tank facility. This analysis demonstrates that aboveground oil storage facilities account for 870 sites out of a total of 1,334 sites (65%).

Figure 4  
New Long-Term Sites by Source



### Fund Adequacy

The fund balance was \$875,648 at the end of the fiscal year (June 30, 2008). Between August and December 2007 (during fiscal year 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. Costs at several sites that were the subject of remedial work during fiscal year 2008 approached or exceeded \$1 million. Although some of these discharges were historic, i.e., they predate establishment of the Fund, they reportedly were only recently discovered and therefore are eligible for clean up through the Fund Insurance Program.

A number of oversight and control measures have been initiated to maintain solvency of the Fund, including:

- Closer technical oversight including “peer review” of state lead clean up projects;
- A revised budgeting system for all Fund expenditures;
- Revision of health based clean up standards (ongoing);
- Development of a more accurate field analytical method for contaminated soil (ongoing);
- Re-evaluation of clean up technologies such as bio-treatment and asphalt batch plants for remediation of petroleum contaminated soils (ongoing);
- Clarification of eligible clean up costs;

- Evaluation of clean up criteria to reduce repeat clean ups at sites where property uses change; and
- Payment of large sum invoices in installments depending on the current Fund balance.

The Department also is encouraging owners who are undertaking remedial work on their own and who plan to seek coverage of their costs under the Fund Insurance Program 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 are done so at their own risk.

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

#### 1. Third party inspections:

Beginning July 1, 2003, passing annual inspection forms must be filed with the Department for all underground oil storage tanks. In November 2008, Notices of Violation (NOVs) were issued to 307 non compliant owners. In November 2007, NOVs were issued to 346 non compliant tank owners. 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 annual inspection requirement was approximately 87% as of December 12, 2008. Compliance improves annually after tank owners receive a Notice of Violation from the Department. Department 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 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 89 installers and 54 inspectors are certified (December, 2008). Each year the Department sponsors a day long training program for certified tank installers and certified tank inspectors. On April 4, 2008, approximately 150 participants, including interested parties as well as certified installers and inspectors, attended the training program. 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:

DEP staff continue to maintain a strong field presence through the performance of compliance inspections across the state. In federal fiscal year 2008 (October 1, 2007 - September 30, 2008) Department staff completed 447 inspections. In FY 2008, inspection efforts targeted facilities for which no passing annual compliance inspection was submitted in the last 12 months or that had not been inspected by DEP staff in approximately 3 years, or where tank ownership had changed. Additionally, random inspections spread throughout the state were also performed.



Compliance inspections include education and technical assistance components. Notices of Violation are issued on-site and include deadlines for gaining compliance. As a result of internal cross-training initiatives, Department staff and certified inspectors and installers record compliance with Stage 1 vapor control equipment requirements established in the federal Clean Air Act during inspections. Staff from the Department's Bureau of Air Quality and certified inspectors and installers oversees Stage II vapor control equipment inspections and testing.

### 3. Aboveground Storage Tank (AST):

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. 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 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 Department's website.

With the new law, effective in August of 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 Chapter 691 by January 1, 2011. Another 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 included a registration due by January 1, 2007, and an annual passing inspection to be performed by July 1, 2007. Through December, 2008 approximately 361 facilities containing motor fuel with underground piping were registered and entered into the Department's database. Diesel facilities must be registered and inspections must be performed by July 1, 2009.

### 4. 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 impact Maine's underground oil storage tank and associated Ground Water Oil Clean-up Fund Insurance program. The Energy Policy Act contains requirements for states, territories and tribes to implement as a prerequisite to qualify for federal clean-up and program implementation grant awards.

In response to the requirements of the Energy Policy Act, the Department proposed legislation for consideration by the legislature in FY 08. The legislature authorized the Department to:

- Develop a training program for the underground oil storage tank operators, and
- Affix a "red tag" to the fill pipe of an underground or aboveground tank fill pipe that is not in compliance, thereby prohibiting further deliveries and operation of the tank until compliance is achieved. Tank owners must be provided a reasonable opportunity to correct the violation(s) before an administrative order and "red tag" are issued.

#### 5. Legislative Proposal:

The current fees on oil transfer, the FIRB surcharge on those fees, periodic transfers from FAME and close monitoring of revenue and spending may not 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 declined from 454 (2002) to 343 (2004) to 307 (2005). However the backlog has steadily increased to 359 (2006) to 442 (2008) and is now at 494 sites (January 2009). The time needed to clean up high risk sites requiring a stringent clean up and the increase in new discharges has outpaced the Departments ability to complete remedial actions on many sites. 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 alone are not likely to be sufficient to allow for the completion of remedial work needed to protect the public health and begin the evaluation of conditions at sites needing characterization work.

Additional statutory and regulatory changes are proposed for legislative action in state fiscal year 09. These changes are being proposed to maintain Fund solvency and promote discussion about important policy considerations regarding the uses of the Fund. These proposals seek to:

- Prohibit payment of costs incurred to implement a voluntary response action plan by the Ground Water Oil Clean-up Fund
- Provide for cost recovery of clean up costs for releases that occur during loading or off loading. These costs can be covered by a responsible party's insurance pursuant to the existing federal regulations promulgated under the Motor Carrier Act, 49 United States Code, Section 31139
- Provide for cost recovery for costs for releases resulting from negligent acts
- Provide that DEP expenses for personnel time on Fund eligible remedial projects be counted towards the maximum allowable \$1 million dollars of coverage