

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, 2010

This report satisfies the requirements of 38 M.R.S.A. § 570-H, which requires the Fund Insurance Review Board, with the 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.

38 M.R.S.A. § 570-H. 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, 2009 and ending December 31, 2009, 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, 2009 (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. 38 M.R.S.A. § 568-B.

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. * (resigned 7/6/09)	Brenda Beaulieu
Dirk Brunner *	Richard McCarthy, SFMO
Mark Hyland, DEP	<i>*Appeals panel member</i>

APPEALS ACTIVITIES

During the calendar year ending December 31, 2009, the Fund Insurance Review Board processed a total of five appeals, two of which were heard by the Appeals Panel of the Fund Insurance Review Board. In both of those cases 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 2009 appeals by case.

REGULATORY CHANGE

The Board filed its Regulatory Agenda on June 30, 2009. 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 2009

FUND INSURANCE REVIEW BOARD - 2009 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	Webber Energy Fuels	06/03/08	06/13/08	07/28/08	09/16/08			09/16/08	DEP decision upheld
						12/02/08	hearing to be continued		
						01/06/09	unavailability of members on 12/2/08	01/06/09	
2	P & H Auto, Inc	12/29/08	01/09/09	03/27/09	04/07/09			04/07/09	DEP decision upheld
3	Matinicus Isle Plantation	03/24/09			06/30/09				withdrawn by appellant
4	Edward T. Frost	04/27/09	05/05/09	06/15/09	06/30/09				withdrawn by appellant
5	Dead River Co.	10/07/09	10/08/09		01/05/10				withdrawn by appellant

appeals heard	2
withdrawn	3
carried to 2010	0
appeals processed	5
DEP/SFMO upheld	2
DEP/SFMO overturned	0
Dismissed/Remanded	0

EXHIBIT B:
Regulatory Agenda 2009

90-564
Fund Insurance Review Board
2009-2010 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 2009-2010 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, 2009 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, 2009 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, 2009 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, 2009 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

Waste Oil Clean-Up Fund ¹

Cash Balance 07/01/08	\$ 3,028,069.12	\$ 3,028,069.12
Interest Income	\$ 165,889.22	
Net Income	\$ 165,889.22	\$ 165,889.22
Net Balance		\$ 3,193,958.34
Loans Disbursed	\$ 243,671.39	
FAME Admin. Expense ²	\$ 37,845.40	
Fund Expenses	\$.00	
Net Expenses	\$ 281,516.82	\$ (281,516.82)
Cash Balance (6/30/09)		\$ 2,912,441.52

The Waste Oil Clean-Up Fund ("Fund") was established in Maine law (10 M.R.S.A. § 1023-L) under the jurisdiction and control of the Finance Authority of Maine (FAME) originally for the purpose of financing costs related to the remediation of the Plymouth, Maine waste oil disposal site. The Plymouth Waste Oil Loan Program was established in 10 M.R.S.A. § 1023-M and states, in part, that money in 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, 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 Loan Program has been instrumental in protecting the health, welfare and safety of the citizens of the state. More than forty 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.

The Fund balance as of June 30, 2009 was \$2,912,441.52. The program was opened to receive new applications for funding for a brief period in 2008 in anticipation of the possible need by borrowers for funds to pay final remedial action costs. That possibility was delayed and 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 in 2008 for funds to pay other eligible response costs. Those loans (in the total amount of \$243,671.39) were disbursed in Fiscal Year 2009 and are reflected in this report. Since then, a plan for final remediation of the Plymouth site

¹ 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 2009 begins July 1, 2008 and ends June 30, 2009.

² FAME is authorized pursuant to 10 M.R.S.A. § 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.

has been agreed upon by stakeholders and is expected to be implemented beginning in 2010. While it was originally anticipated that borrowers in the program would seek loans or loan increases from the Fund to pay their shares of the cost of final remediation, those costs were ultimately funded through the Waste Motor Oil Disposal Site Remediation Program.

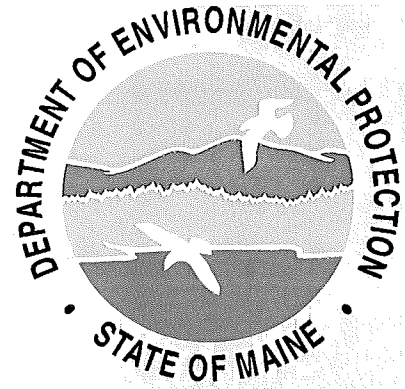
The cost of the final remediation to the “settling” potentially responsible parties (PRPs) at Plymouth was \$14,233,559. While the Waste Oil Clean-up Fund was expected to be valuable in offsetting the impact of this cost, it was also clear that the Fund would be inadequate to cover this cost for all existing or any new borrowers. As a result, the Waste Motor Oil Disposal Site Remediation Program was created through legislation enacted in the First Regular Session of the 123rd Legislature and is also aimed at providing financial assistance to eligible parties for response costs. Created by Public Law 2007, Chapter 464 (10 M.R.S.A. §§ 1020, 1020-A), it authorized FAME to issue up to \$30,000,000 in revenue obligation bonds to pay both the past and future response costs of eligible parties at Plymouth and three other waste motor oil disposal sites in Casco, Ellsworth, and Presque Isle, Maine. The bond payments are made with revenues generated from a premium on the first sale or distribution of certain motor oils in the state, which is collected by Maine Revenue Services and transferred to the Waste Motor Oil Revenue Fund administered by FAME.

The “future” response costs are the costs of the final remediation, as noted above. The “past” response costs are the costs incurred by the PRPs prior to the final remediation, some of which were paid with amounts borrowed under the loan program. The Waste Oil Clean-Up Fund was therefore expected to be replenished upon application of bond proceeds in the form of loan repayments. However, the revenues from the oil premium as of the time of the first sale of bonds (September 2009) were insufficient for FAME to issue bonds to cover all past and future costs of all eligible parties at Plymouth. FAME was able to issue bonds in the amount of \$14,495,000, however, of which \$14,467,117.50 was available for response costs. After payment of the future response costs of \$14,233,559, only \$233,558 remains currently available to the Plymouth PRPs to reimburse them for their past response costs, including repayment of loans. It has not yet been determined what portion of \$233,558 will actually go to the Fund as repayment of loans, but that activity is expected to take place during the first quarter of calendar year 2010. If additional bonds are not issued to complete reimbursement of past response costs related to Plymouth, the loans are expected to go into repayment. Payment is deferred until construction of the final remedy is complete. It is currently anticipated that construction of the remedy could be complete as early as the end of 2010, but in any event by the end of 2011. The law establishing the Fund was amended when the Waste Motor Oil Site Remediation Program was created to allow FAME to also use money in the Fund for purposes under the Waste Motor Oil Site Remediation Program. When all four waste oil disposal sites have been remediated and all response costs paid, amounts remaining in the Waste Oil Clean-Up Fund and in the Waste Motor Oil Revenue Fund are to lapse to the Groundwater Oil Clean-Up Fund.

For more information about the Waste Motor Oil Disposal Site Remediation Program, please see the January 15, 2010 Report to the Joint Standing Committee on Natural Resources prepared and submitted by FAME, the Maine Department of Environmental Protection, and Maine Revenue Services.

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, 2010

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 38 M.R.S.A. § 570-H which requires a report to be submitted to the Joint Standing Committee on Natural Resources regarding 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) 2009 (July 1, 2008 – June 30, 2009). A balance of \$2,473,252 was carried forward from FY 2008. The total net balance for FY 2009 was \$18,516,512 including the carry forward balance. Net expenditures totaled \$12,840,728.

During the Fiscal Year 2009, there was a decrease in annual income of \$785,772 and a decrease in expenditures of \$6,372,255 when compared to Fiscal Year 2008. The reduction in expenditures is the result of the Department's efforts to stabilize the fluctuating balance in the Fund. These efforts are discussed in greater detail in Section H of this report (Fund Adequacy) and include prioritized spending and increased evaluation and oversight of remedial approaches to ensure adequate cost control measures are being implemented. The main sources of income are fees on each barrel of oil transferred into Maine by ship, road or rail.¹ 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 rule² 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 in effect since January 1, 2006).

¹ See 38 M.R.S.A. §569-A, sub-§5.

² 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 2009 includes fee refunds totaling \$2,723,584. A person who paid fees on oil offloaded at a marine oil terminal is entitled to a refund if the oil was exported without subsequent storage in an aboveground or underground oil storage tank in Maine.³ Refunds during FY 2009 increased by \$369,659 compared to FY 2008. The amount refunded for each of the past 7 years is listed below.

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

Fiscal Year 2009	\$2,723,584
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

³ See 38 MRSA §569-A(7) and chapter 685 of department rules, 06-096 CMR 685.
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TABLE 1

STATEMENT OF CASH POSITION
GROUNDWATER OIL CLEAN-UP FUND
AT JUNE 30, 2009

BALANCE FORWARD (July 1, 2008)	\$ 2,473,252
INCOME	\$ 18,766,844
Minus Fee Refunds	- \$ 2,723,584
NET INCOME	\$ 16,043,260
NET BALANCE	\$ 18,516,512
EXPENDITURES	
Personal Services	\$ 4,272,584
All Other	\$ 6,321,838
Capital	\$ 0
Indirect Cost Transfers	\$ 1,882,936
Other Transfers (Excluding FAME)	\$ 353,370
Transfer - FAME	\$ 10,000
NET EXPENDITURES	\$ 12,840,728
CASH BALANCE (June 30, 2009)	\$ 5,670,781
NET OBLIGATIONS	\$ 518,839
NET FUND AVAILABILITY (June 30, 2009)	\$ 5,151,941*

NOTES:

- "INCOME" INCLUDES FEES, INTEREST, REIMBURSEMENTS, FINES AND MISCELLANEOUS 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 COLLECTION OF FEES 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 characterize sites that have not been investigated, complete ongoing remedial work, or 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 eligible cleanup costs up to \$1 million per occurrence.⁴ 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, 2009)	672
Total Eligible	605
Total Eligible before September 28, 1995	285
Total Eligible September 28, 1995 - June 30, 2009	320
Total Ineligible	67

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, 2008 through June 30, 2009, the Department received 8 applications for the coverage of clean up costs. This is a decrease of 8 applications compared to the total number of applications received in FY 2008. Two applicants were determined to be ineligible in FY 2009. 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, 2009)	2,743
Total Eligible	2,646
Total Ineligible	97

⁴ See 38 M.R.S.A. §568-A.
Adm fund 09 part II

During FY 09, 192 eligible applications were forwarded to the DEP from the Office of State Fire Marshal. This represents a decrease of 76 eligible applicants when compared to the number of applications (268) referred to the Department from the Office of State Fire Marshal in FY 2008. Three applications were processed by the Office of State Fire Marshal during FY 09 and determined to be ineligible for coverage of clean-up costs. The decrease 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 2008 -2009 had less heavy snow fall, resulting in fewer releases from snow and ice falling from roofs and breaking oil lines and filters and; 2) the Department of Environmental Protection received fewer belated filings for fund coverage compared to FY 08 when the Department sought reimbursement from potential applicants that had not filed for the coverage of eligible clean-up costs.

TABLE 4

Total Applications (sum of Tables 2 and 3)
(July 1, 1990 – June 30, 2009)

Total Received	3,415
Total Eligible	3,251
Total Ineligible	164

D. Administration of Third Party Claims.

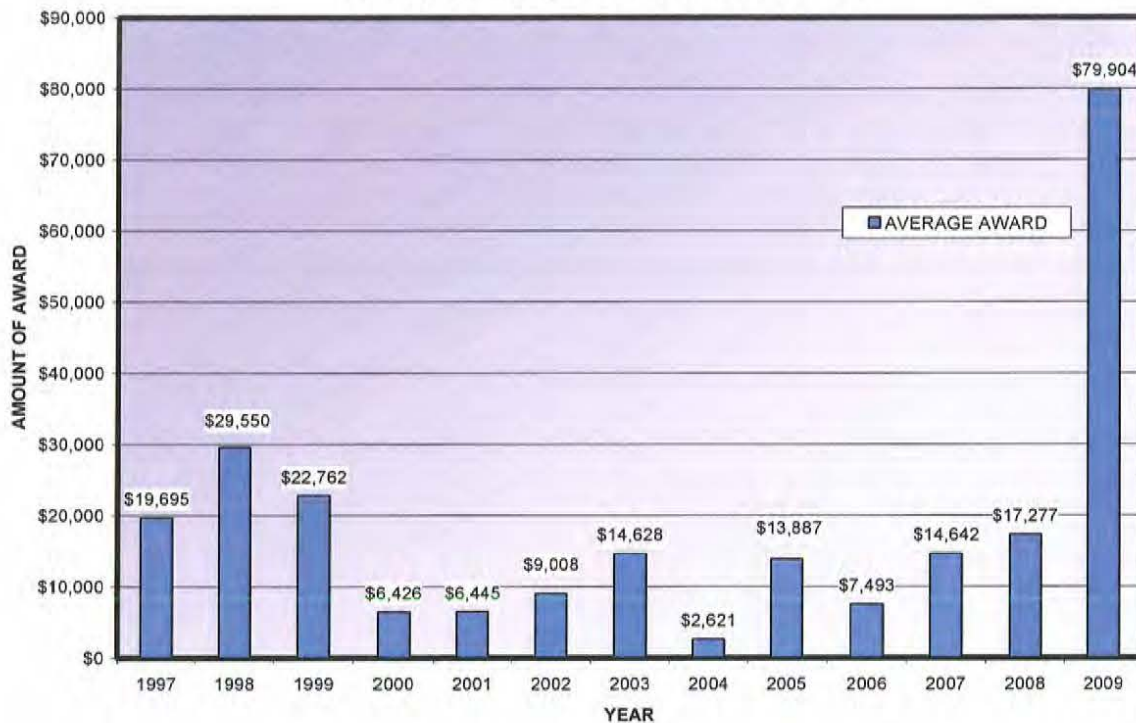
The Department of Environmental Protection currently is processing 12 claims against the Ground Water Oil Clean-up Fund for coverage of damages to third parties. During FY 09, the Department completed processing of 10 claims filed and awarded a total of \$239,765 in cash damages to third party claimants.

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.

Seven claims were dismissed, withdrawn or settled without a cash award during FY 09. The average award for the 3 claims that were settled was \$79,905. The average cash award to third party claimants in FY 08 was \$17,277. In FY 09, one claimant received the maximum award allowed in statute (\$200,000) and this raised the average award for FY 09. Figure 1 illustrates the average cash award to third party claimants from 1997 through 2009. 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 drinking water treatment system. This scenario would also likely result in a high average award for that year.

FIGURE 1

AVERAGE THIRD PARTY DAMAGE CLAIM AWARD



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 and sand and gravel aquifers. The final deadline for proper abandonment of non-conforming tanks owned by municipalities and school administrative districts was October 1, 1998.

As of December 2009, 35,547 bare steel tanks have been properly removed or abandoned in place. This includes 86 of these non-conforming tanks that were removed in 2009. Currently there are about 184 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 and financial assistance and enforcement actions to get these tanks removed, with priority given to locations storing motor fuels in sensitive geologic areas.

To date, approximately 40,000 underground tanks have been removed or permitted to be abandoned in place including 4,691 conforming tanks. Owners of 72 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 issues a Notice of Violation to non-compliant owners requesting a site assessment be performed and submitted. Currently, there are 4,321 conforming underground oil storage tanks registered and in operation in the State of Maine.

F. Voluntary Response Action Program (VRAP).

In the recent past 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 responsibility requirements, thereby enabling them to gain compliance with state and federal requirements.

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 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 has been used to help new owners clean up the site for redevelopment.

There is nothing illegal about this practice. However, some assessments particularly at inland bulk oil distribution facilities with aboveground tanks 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. Furthermore, there is often a change in use associated with the redevelopment, requiring a higher degree of clean-up than was originally performed.

When the Fund is used in this manner, it functions as a brownfields re-development 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 sites undergoing re-development that pose a low risk to the environment and public health.

In FY 2009 there was a decrease in the number of applications to the Voluntary Response Action Program and less demand on the Ground Water Oil Clean – up Fund from re-development activities. However, as Maine's economic climate improves we are both optimistic that more properties will undergo redevelopment and concerned that the Fund may not be adequate to effectively support these initiatives.

G. Remediation Sites.

The Fund was established in part to “provide for the investigation, mitigation and removal of discharges or threats of discharge of oil from aboveground and underground storage facilities.”⁵ 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 backlog includes a mixture of sites needing remedial work and has fluctuated as illustrated in Table 5 from 454 (2002) to 343 (2004) to 307 (2005) to 359 (2006) to 494 (2009) and is currently at 441 (January, 2010). The backlog includes sites that are subject to stringent clean up standards (and therefore take more time to fully remediate) and sites where ground water and drinking water supplies have been contaminated and periodic monitoring is needed to assess the success of clean-up work already carried out.

TABLE 5

Number of Sites Needing Remedial Work

January	2010	441
January	2009	494
January	2008	442
January	2006	359
January	2005	307
January	2004	343
January	2002	454

⁵ See 38 MRSA §561.
Adm fund 09 part II

Figure 2 illustrates the number of active, long-term remediation sites. As this number fluctuates, managing expenditures through the prioritization of sites based on risk and cleaning sites to levels commensurate with the degree of risk posed 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

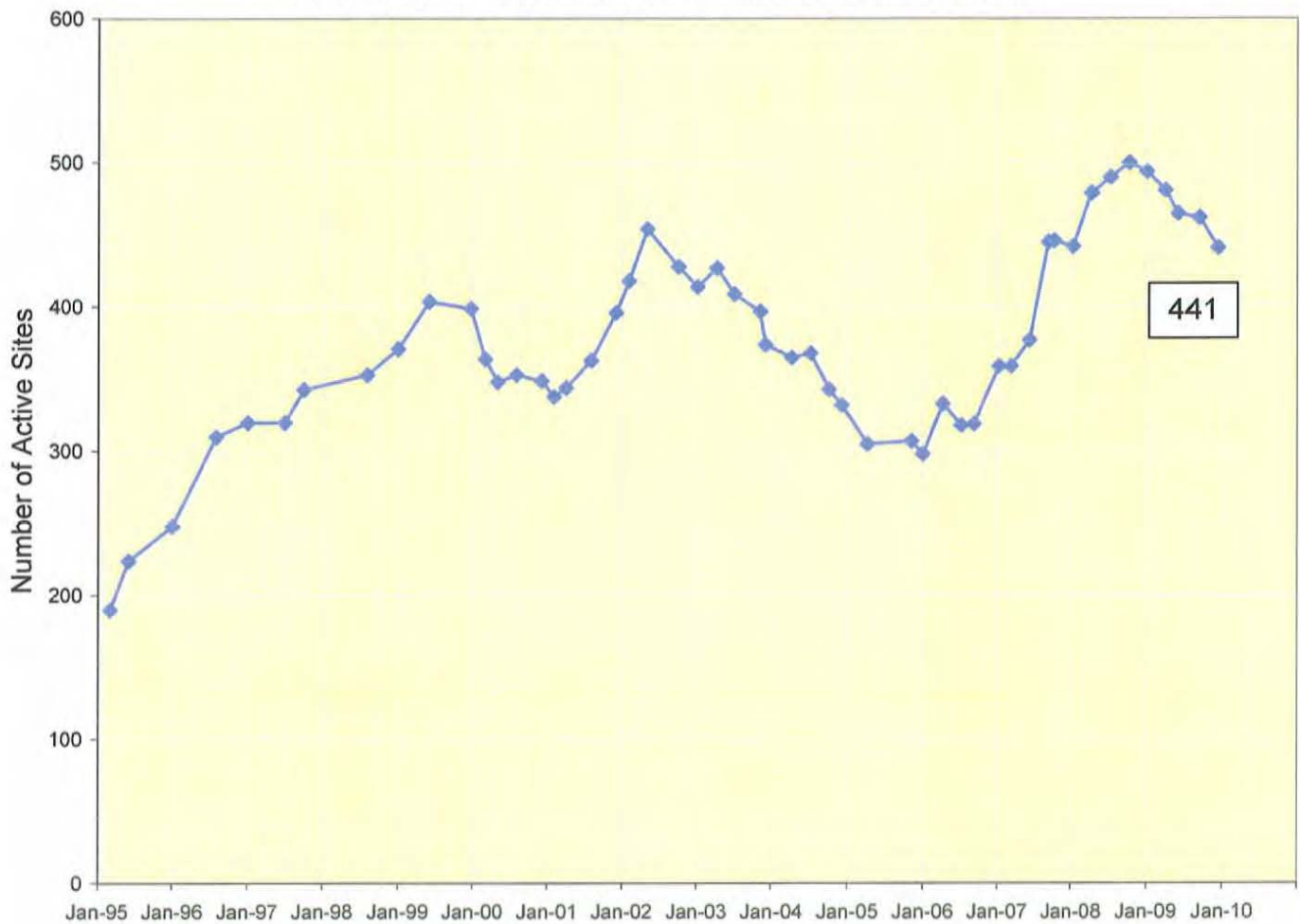


Figure 3 illustrates the make-up of the sites subject to long term cleanup activities by sorting the sites according to the predominant petroleum product released. Data from 1999 through calendar year 2009 is provided. Sites contaminated by fuel oil and kerosene account for 932 of the 1,413 sites (66%).

Figure 3
New Long-Term Sites Sorted By Product

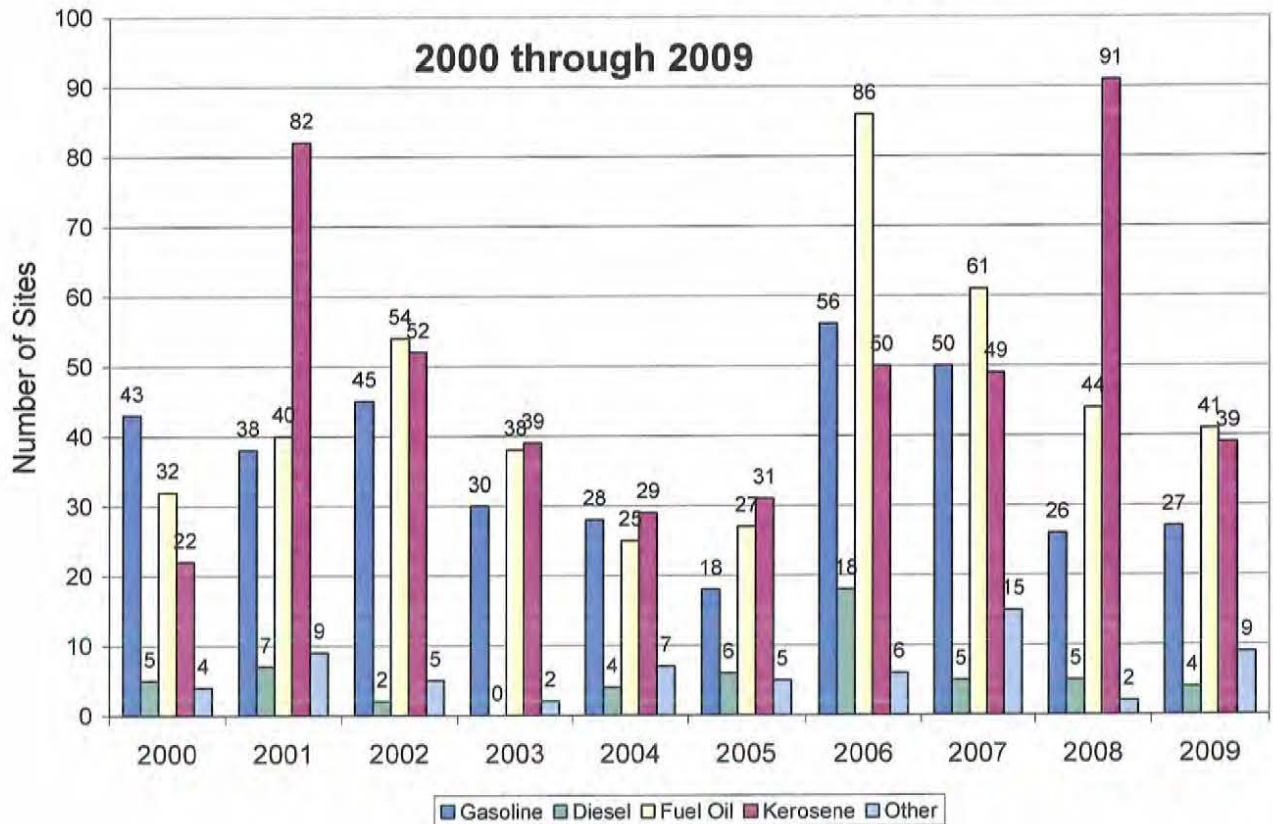
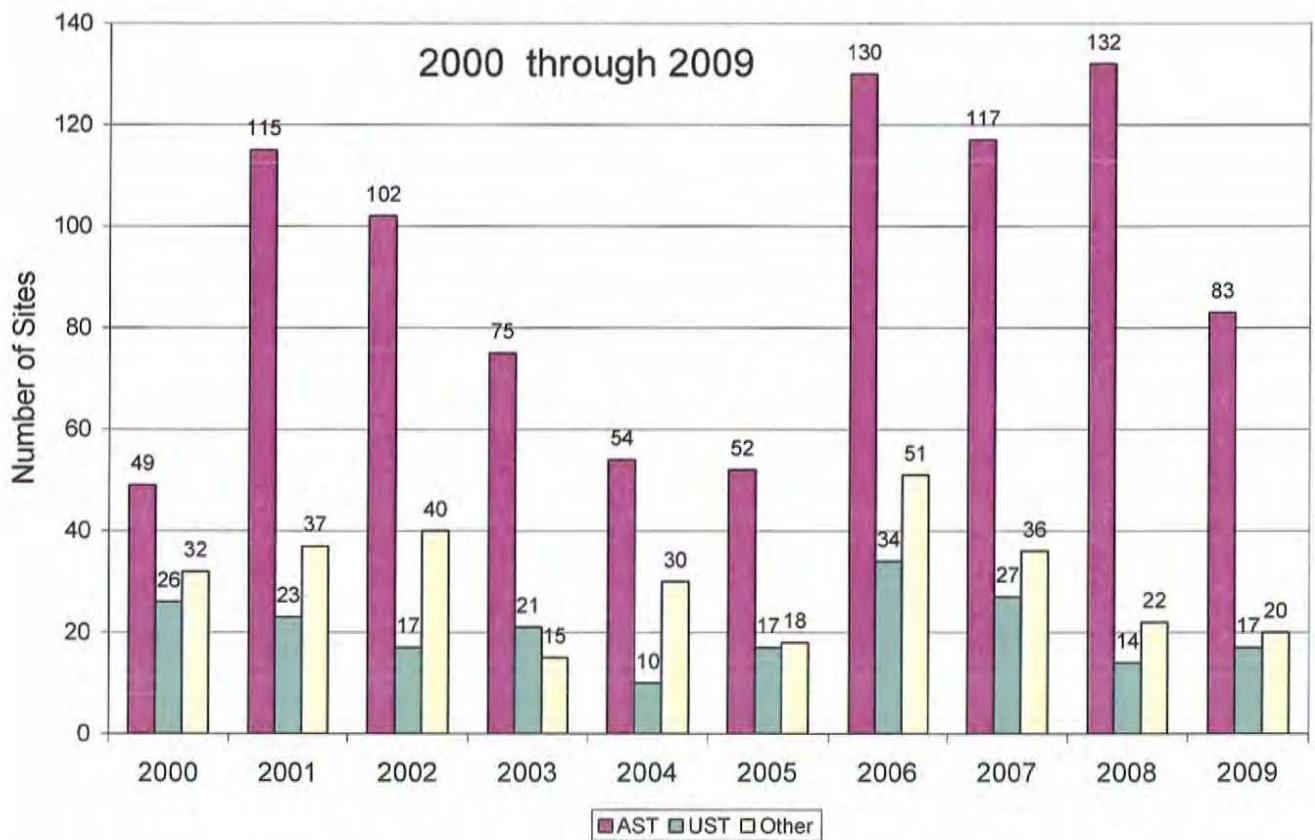


Figure 4 illustrates the make-up of sites subject to long term cleanup activities by sorting the sites according to the source or type of storage tank facility. This analysis demonstrates that aboveground oil storage facilities account for 909 sites out of a total of 1,416 sites (64 %).

Figure 4
New Long-Term Sites Sorted By Source



H. Fund Adequacy.

The balance in the fund was \$5,670,781 at the end of the fiscal year (June 30, 2009). However during fiscal year 2008, the cash balance dropped from approximately \$5.5 million to \$1.7 million. The decline 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 eligible for clean-up through the Fund Insurance Program.

It is also noteworthy that a small percentage of sites in particularly sensitive locations account for a disproportionate percentage of annual remediation expenditures. For example from 1996 to 2008, 46% of clean-up expenditures were needed at 2% of the commercial AST sites that were approved for coverage. Similarly, 2% of discharges from eligible UST sites were responsible for 27% of the expenditures.

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

- *Closer technical oversight including “peer review” of clean-up remedies and budgets for all state lead clean up projects;*
- *A revised budgeting system for all other Fund expenditures;*
- *Revision of health based clean up standards;*
- *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 when necessary depending on the current Fund balance.*

These measures in combination with prioritizing expenditures based on health risks and a reduced demand from re-development projects have resulted in a more stable fund balance.

By the end of FY 2009, the Department had paid in full all eligible clean-up costs and third party damages that had been processed and there was no backlog of approved but not paid claims.

The Department is implementing the following initiatives to help prevent releases and reduce expenditures:

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 September 2009, Notices of Violation (NOVs) were issued to 352 non-compliant owners. In November 2008, NOV's were issued to 307 non-compliant tank owners. Compliance with the annual inspection law has gradually improved from 70% by mid year 2004 to 87% in December, 2008 to about 92% in December 2009. 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.

2. Certified Installers and Inspectors:

The annual inspection must be completed by an installer or inspector certified by the Maine Board of Underground Storage Tank Installers. A total of 87 installers and 58 inspectors are certified (December 2009). Each year the Department sponsors a day long training program for certified tank installers and certified tank inspectors. On April 28, 2009, approximately 180 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 approximately 25 credit hours of training each year.

3. Increased field presence:

DEP staff continues to maintain a field presence through the performance of compliance inspections across the state. In federal Fiscal Year 2009 (October 1, 2008 - September 30, 2009) Department staff completed 322 inspections. Fewer DEP inspections were performed in federal Fiscal Year 2009 due to staffing vacancies and medical conditions that prevented this type of fieldwork. In FY 2009, inspection efforts targeted facilities for which no passing annual compliance inspection was submitted in the previous 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. Department staff and certified inspectors and installers also record compliance with Stage 1 vapor control equipment requirements established in the federal Clean Air Act during inspections. Stage II vapor control equipment inspections and testing is no longer required.

4. Aboveground Storage Tanks (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 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 the current requirements of Chapter 691. With 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 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 passing 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 2009 approximately 146 facilities containing motor fuel with underground piping were registered and entered into the Department's database. Ninety-five diesel facilities have been registered.

5. Operator Training:

The Energy Policy Act of 2005 (Act) requires each state to provide training opportunities for operators of underground oil storage facilities storing motor fuels. The Department has developed an internet based training program for both class A and B operators that meets the requirements of the Act. The program is named Tank Smart. The Department is hosting 8 sessions to provide the regulated community with an opportunity to review and offer comments on the program. The program will be available this spring and will be free of charge. Operators will enter the facility registration number and will be directed to a series of facility specific training modules. The operators will be able to view the training modules and take a computer generated test consisting of multiple choice and true and false questions. Upon successful completion (80%) of the test, operators will be able to print a certificate indicating the training has been completed. The Department is proposing that operators must re-certify annually. A written training program will also be available for those facilities that do not have a computer or for those that prefer a written training and testing program rather than the internet based program.

6. Legislative Proposal:

The current fees and the authority of the FIRB to impose a 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 has fluctuated from 454 (2002) to 307 (2005), increased to 494 sites (January 2009) and is currently at 441 (January 2010). 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. However, these measures alone may not 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 were proposed for legislative action in state Fiscal Year 09. These changes were proposed to maintain Fund solvency and promote discussion about important policy considerations regarding the uses of the Fund. These proposals were not adopted but did result in a directive to convene a stakeholder group. A letter report including recommendations for statutory changes is scheduled to be presented to the Natural Resources Committee of the Legislature.