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Report to the Joint Standing Committee on Environment  
and Natural Resources  
126<sup>th</sup> Legislature, Second Session

# Annual Report of the Fund Insurance Review Board

*February 2014*

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## Executive Summary

The Ground Water Oil Clean-up Fund (Fund) provides for the prompt and effective cleanup of petroleum releases and compensation of third party damages. The Fund is approved by the U.S. Environmental Protection Agency as an acceptable mechanism for Maine's tank owners to meet the federal financial responsibility requirements. The Fund is an important source of funding for the clean-up of oil-contaminated sites necessary to protect public health and the environment, and to support the continuing economic value of properties. The Department has implemented a variety of strategies to reduce expenditures, prioritize spending and control costs such as targeting removal of contaminated soils using health-based clean-up guidelines, and considerations for the re-use of properties.

The Fund Insurance Review Board meets regularly and provides effective oversight to the Department regarding these measures, and has placed a heightened focus on the cost effectiveness of remedial measures.

This report satisfies the 2014 reporting requirement of 38 M.R.S.A. § 568-B(2-D). 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 having jurisdiction over natural resource matters on the department's and the review board's experience administering the Ground Water Oil Clean-up Fund, clean-up activities and 3rd-party damage claims. The report must include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report also must 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 for the period beginning January 1, 2013 and ending December 31, 2013, and is divided into two sections. Part I covers the Board's activities and Part II addresses the Department's administration of the Fund including an assessment of the adequacy of the Fund.

The Waste Motor Oil Disposal Site Remediation Program Report was submitted under separate cover by the Finance Authority of Maine to the Joint Standing Committee on Environment and Natural Resources in January 2014.

## **PART I**

### **FUND INSURANCE REVIEW BOARD**

#### **A. Mission of the Fund Insurance Review Board**

The duties of the Fund Insurance Review Board (“FIRB” or “Board”) are established at 38 M.R.S.A. § 568-B(1) to: (1) hear and decide appeals from insurance claims-related decisions of the Department of Environmental Protection and the State Fire Marshal’s Office pertaining to assistance from the Ground Water Oil Clean-up Fund, (2) monitor income and disbursements from the Ground Water Oil Clean-up Fund, and (3) review Department priorities for disbursements from the Ground Waste Oil Clean-up Fund and make recommendations to the Commissioner on how the fund should be allocated.

#### **B. FIRB Governing Law and Composition**

The Fund Insurance Review Board consists of ten members, to include: the Commissioner of the Department or their designee; the State Fire Marshal or their designee; two persons representing the petroleum industry; two persons with expertise in oil storage facility design and installation, oil spill remediation or environmental engineering; and four members of the public, two of whom have expertise in biological science, earth science, engineering, insurance or law. The Appeals Panel consists of four public members. Nine members participated in the Board through 2013. As of January 2014, ten members currently serve on the Board.

The Fund Insurance Review Board fulfilled its duties in 2013 through participation of the following members:

Michael Bonzagni\*, Chair  
Richard Knowlton\*  
Brenda Beaulieu\*  
Dirk Brunner \*  
Jamie Py

Patrick Coughlin  
Leslie Anderson  
Melanie Loyzim, DEP  
Richard McCarthy, SFMO

\*Appeals panel member

38 M.R.S.A. § 568-B requires the Board to meet six times per year unless the Board votes not to hold a meeting. The Board met a total of six times in 2013.

Pursuant to P.L. 2013, ch. 22, (eff. Oct. 9, 2013), the Board transitioned from the Finance Authority of Maine to the Department for administrative support.

### **C. Appeals Activities**

During the calendar year ending December 31, 2013, the Fund Insurance Review Board received three appeals, two of which were heard by the Appeals Panel. In both cases, the agency decisions were overturned. One appeal has been continued to 2014. In carrying out its responsibilities, the Appeals Panel held two meetings during which appeal hearings were conducted.

### **D. Regulatory Activity**

In 2013, the Fund Insurance Review Board amended each of the 4 chapters of its rules.

Amendments to Chapter 3, Appeals Procedure, updated provisions for submission of materials and establishing a quorum, added provisions for alternative dispute resolution, and clarified procedural requirements.

Amendments to Chapter 4, Oil Import Fees, reduced the additional fees that are assessed under 38 MRSAS 569-A(5)(E) when the balance of the Ground Water Oil Clean-up Fund is \$5 million or less from 20 cents to 18 cents per barrel of gasoline, and from 10 cents to 6 cents per barrel of other refined products and their by-products, including #2 fuel oil, kerosene, jet fuel and diesel fuel, but not including liquid asphalt and #6 fuel oil.

Amendments to Chapter 5, Documentation Requirements for Applications to the State Fire Marshal for Coverage by the Ground Water Oil Clean-up Fund at Above Ground Oil Storage Facilities, added provision for self-certified spill prevention control and countermeasure plans and the use of photographic evidence.

The Fund Insurance Review Board repealed Chapter 6, Assessment of Inability to Pay Deductible for a Personal Residence Under the Ground Water Oil Clean-up Fund, due to duplication with Department rules.

The Board filed its Regulatory Agenda on September 25, 2013 to provide a placeholder if any regulatory changes may be needed in 2014.

## **PART II**

### **Administration of the Ground Water Oil Clean-up Fund Maine Department of Environmental Protection**

#### **A. Introduction**

State statute prohibits oil discharges and requires oil discharges to be cleaned up to the Commissioner's satisfaction, using remedies that are cost effective, technologically feasible and reliable, and that effectively mitigate or minimize damages and provide adequate protection of public health, welfare and the environment. Maine law provides an incentive for the prompt cleanup of petroleum releases by forgoing penalty actions against responsible parties that cooperate with the Department to promptly clean up releases to the satisfaction of the Commissioner and reimburse the state's expenditures that are not covered by the Fund insurance program. The Ground Water Oil Clean-up Fund provides for the prompt and effective cleanup of petroleum releases and compensation of third party damages. The Fund is approved by the U.S. Environmental Protection Agency as an acceptable mechanism for Maine's tank owners to meet the federal financial responsibility requirements.

#### **B. Summary of Revenues and Expenditures**

The main sources of revenue into the Fund 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 fuel oil. Additionally, Chapter 4 (90-564 CMR 4) of the rules of the Fund Insurance Review Board imposes a surcharge when the balance in the Fund falls below \$5 million dollars. The former surcharge of 20¢ per barrel of gasoline and 10¢ per barrel of other petroleum products was "turned off" in accordance with the rule, effective December 1, 2012 (FY13) when the fund balance averaged \$7 million or more for 3 consecutive months. The surcharge has been reduced from 20¢ to 18¢ per barrel of gasoline and from 10¢ to 6¢ per barrel of other refined petroleum products. This change was made by amendment of Chapter 4 of the Fund Insurance Review Board Rules (see Part I of this report).

Table 1 illustrates financial activity in the Ground Water Oil Clean-up Fund for fiscal year (FY) 2013 (July 1, 2012 – June 30, 2013). A balance of \$7,973,698 was carried forward from FY 2012. The net balance for FY 2013 was \$19,911,997, including the carry forward balance. Expenditures totaled \$11,754,691, and the net fund availability at the end of the fiscal year was \$7,773,083.

In FY 2013, there was a decrease of \$2,553,646 in income mainly due to the surcharge suspension and a decrease of \$263,593 in expenditures compared to FY 2012. The continued pattern of decreases in expenditures is due in part to the Department's efforts to reduce staff costs combined with the Department's stringent budgeting strategies. The Department continues to implement cost control measures in consultation with the Fund Insurance Review Board. These efforts are discussed in greater detail later in this report and include prioritized spending and heightened focus on the cost effectiveness of remedial measures.

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<sup>1</sup> See 38 M.R.S.A. § 569-A(5)

Table 1 provides a summary of the income, expenditures and fund balance for FY 2013.

TABLE 1	
STATEMENT OF CASH POSITION GROUNDWATER OIL CLEAN-UP FUND AT JUNE 30, 2013	
BALANCE FORWARD (July 1, 2012)	\$ 7,973,698
INCOME	\$13,844,646
Minus Fee Refunds	- \$ 1,906,347
NET INCOME	\$11,938,299
NET BALANCE	\$19, 911,997
EXPENDITURES	
Personal Services	\$ 3,850,817
All Other	\$ 5,703,264
Capital	\$ 12,710
Indirect Cost Transfers	\$ 1,387,309
Other Transfers (Excluding FAME)	\$ 540,591
Metallic Mineral Mining Fund Transfer	\$ 250,000
Transfers to FAME	\$ 10,000
NET EXPENDITURES	\$11,754,691
CASH BALANCE (June 30, 2013)	\$ 8,157,306
INDIRECT COST OBLIGATION (June 30, 2013) (untaken)	\$ 5,789
ENCUMBRANCES AND OBLIGATIONS (untaken)	\$ 378,434
NET FUND AVAILABILITY (June 30, 2013)	\$ 7,773,083 *
<p>*Does not consider outstanding liabilities required to characterize sites that have not been investigated, complete ongoing remedial work, or pay user fee obligations.</p>	
<p>NOTES:</p> <ul style="list-style-type: none"> <li>• "INCOME" INCLUDES FEES, INTEREST, REIMBURSEMENTS, FINES AND MISCELLANEOUS INCOME.</li> <li>• "OTHER TRANSFERS" INCLUDES TRANSFERS TO OTHER STATE AGENCIES, AND INTERNAL TRANSFERS TO OTHER ACCOUNTS.</li> <li>• "EXPENDITURES" INCLUDE ADJUSTMENTS TO BALANCE FORWARD INCOME (CREDIT TO EXPENSES).</li> <li>• THE COLLECTION OF FEES IS SUSPENDED WHEN THE FUND BALANCE REACHES \$12,500,000.</li> <li>• NET OBLIGATIONS INCLUDES ENBUMBRANCES AND INDIRECT COST OBLIGATIONS (UNTAKEN).</li> </ul>	

Table 2 provides the net income for each of the past 5 years.

FY 2013	\$11,938,299
FY 2012	\$13,878,862
FY 2011	\$14,357,938
FY 2010	\$13,685,980
FY 2009	\$16,043,260

The net fund income includes all revenue received during FY 2013 minus fee refunds in the amount of \$1,906,347. The fee is assessed on the first transfer of gasoline and other refined petroleum products and their by-products including #2 fuel oil, kerosene, jet fuel and diesel fuel and #6 fuel oil. The fee is assessed on the first transfer of those products by oil terminal licensees and on a person who first imports oil into the State by road or rail. The fee is not assessed on petroleum products that are exported from this State. An entity that paid fees on oil offloaded at a marine oil terminal is entitled to a refund if the oil subsequently was exported directly from the terminal to an out-of-state location and is not distributed in Maine.<sup>2</sup> Refunds during FY 2013 decreased by \$606,574 compared to FY 2012. The amount refunded in past years is listed in Table 3 below:

FY 2013	\$1,906,347
FY 2012	\$2,512,921
FY 2011	\$2,240,969
FY 2010	\$2,445,860
FY 2009	\$2,723,584

<sup>2</sup> See 38 MRS-A § 569-A(7) and chapter 685 of Department rules, 06-096 CMR 685.



### C. Fund Adequacy

The net fund availability (cash balance minus encumbrances) in the Fund was \$7,773,083 at the end of FY 2013 (June 30, 2013). This represents a decrease of \$200,615 since the beginning of the fiscal year. All approved claims for reimbursement, payments to contractors and third party claims have been paid. Funding for cleanup activities is prioritized to insure that sites posing the greatest risk are cleaned up.

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

- Close technical oversight, including internal “peer review” of clean-up remedies and budgets for all state led clean-up projects;
- Use of an analytical procedure to identify the toxicity of petroleum hydrocarbons, allowing for more accurate characterization and targeted removal of the contaminated soil posing the highest risk;
- Use of a revised budgeting system to prioritize Fund expenditures;
- Close evaluation of clean-up criteria to insure sites are cleaned commensurate with plans for re-use to reduce the likelihood of repeat clean-ups at sites where property uses are likely to change; and
- Use of revised health based clean-up standards.

The Department’s implementation of new, more focused, health based clean-up guidelines has dramatically improved the cost effectiveness for the clean-up of oil discharges from underground and aboveground oil storage (UST and AST) facilities. Most of these cost savings have been realized at sites requiring soil remediation.

### D. Status of Applications for Coverage of Clean-up Costs

Table 4 provides statistics for eligibility determinations of applications for coverage of eligible clean-up costs and third party damages 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 clean-up costs up to \$1 million per occurrence.<sup>3</sup> Applications related to underground oil storage facilities (UST) are filed with the Department of Environmental Protection. Applications for eligibility determinations for aboveground oil storage facilities (AST) are filed with the Office of State Fire Marshal.

Eligible applicants are required to pay a standard deductible based on the number of underground oil storage facilities they own or, in the case of aboveground tanks, total tank capacity. Conditional deductibles may also be assessed for non-compliance with the applicable facility installation, operation, removal and spill reporting requirements. The assessment of deductibles may be appealed

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<sup>3</sup> See 38 MRSA § 568-A

to the Fund Insurance Review Board (see Part I of this report). The deductible amounts are established in statute<sup>4</sup>.

From July 1, 2012 through June 30, 2013, the Department received 3 applications for the coverage of clean-up costs at UST facilities. By comparison, in FY 2012, the Department received 4 applications.

During FY 2013, 156 orders finding applicants eligible for coverage of clean-up costs at AST facilities were forwarded to the Department from the Office of State Fire Marshal; the Office found that 2 other applicants were ineligible for fund coverage. This represents a decrease of 41 eligible applicants compared to FY 2012.

Table 4 summarizes application activity from aboveground and underground oil storage facilities in FY 2013.

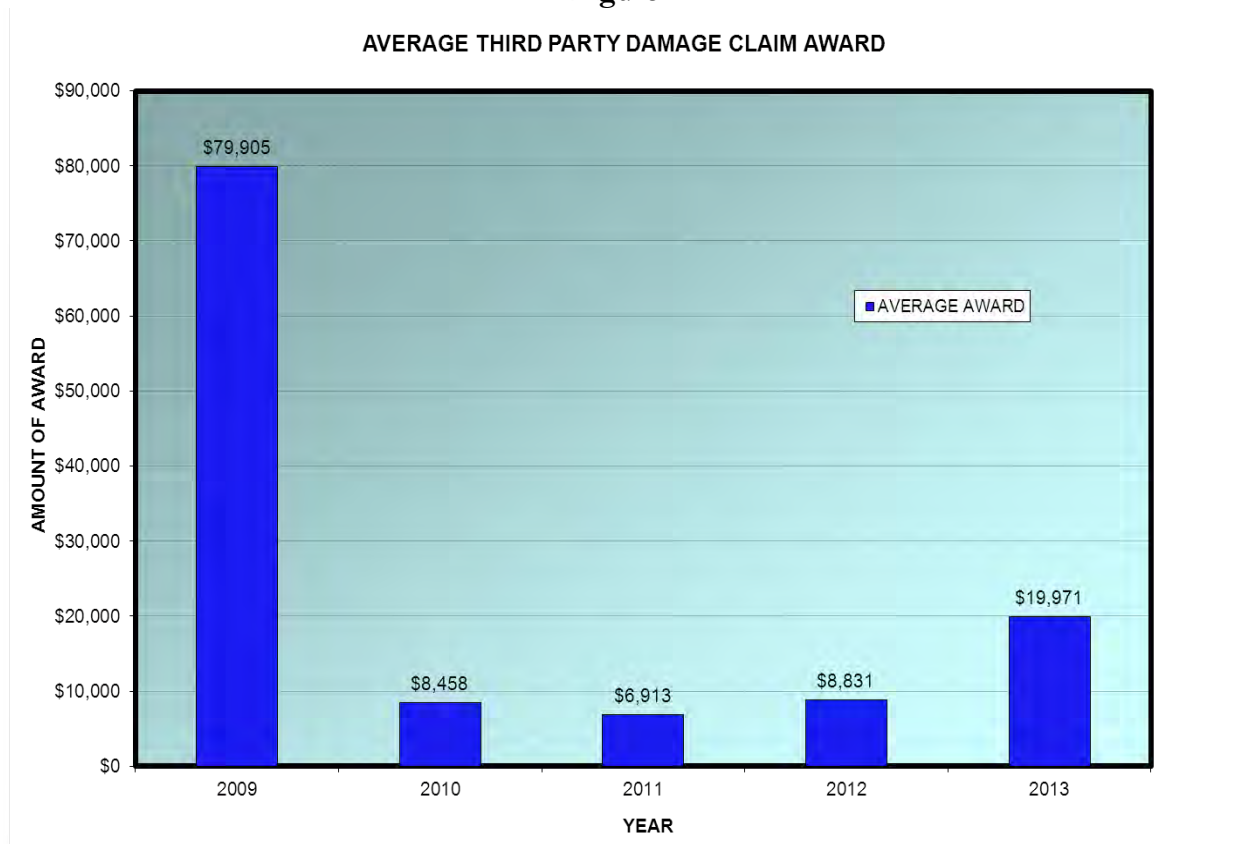
Total Received FY 13	161
Eligible	159
Ineligible	2

### E. Administration of Third Party Claims

The Department is currently processing 12 claims against the Ground Water Oil Clean-up Fund for coverage of damages to third parties. During FY 2013, the Department completed processing two (2) third party claims and awarded a total of \$39,942 to third party claimants for claims that were fully resolved. In addition to the two (2) claims that were fully resolved in FY 2013, the Department paid a partial award of \$7,500 for lost income, with this claimant likely to seek an additional award at a later date. The average cash award to third party claimants for claims that were fully resolved in FY 2013 was \$19,971. The average cash award to third party claimants in FY 2012 was \$8,831. Figure 1 illustrates the average cash award to third party claimants from 2009 through 2013. 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 include 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. Many third parties do not file a claim because the damages are mitigated during site clean-up through the connection to public water systems, installation of treatment units and individual well replacements.

<sup>4</sup> See 38 MRSA § 568-A(2)

Figure 1



## F. Compliance with Tank Abandonment Schedule

As of December 2013, there were 3,966 conforming underground oil storage tanks registered and in operation in Maine. 35,777 non-conforming underground tanks have been properly removed or abandoned in place since removal deadlines were enacted over twenty years ago. This includes 68 non-conforming tanks that were removed in 2013. The Department continues to use a combination of technical and financial assistance and enforcement actions to get these tanks properly removed, with priority given to locations storing motor fuels in sensitive geologic areas.

In addition to the non-conforming tanks, approximately 3,940 conforming (corrosion resistant) underground oil storage tanks also have been removed or permitted to be abandoned in place. Conforming underground tanks must be removed upon confirmation of a leak or upon the expiration date of the tank manufacturer's warranty. Approximately 45 owners of removed tanks have failed to submit the required site assessment. The site assessment is needed to determine if clean-up actions are necessary. Non-compliant tank owners are the subject of enforcement action by the Department.

### G. Voluntary Response Action Program (VRAP)

The Ground Water Oil Clean-up Fund can be used to clean up oil contaminated commercial property that is being sold or has been sold for redevelopment. As businesses close and properties are sold for other uses, site assessments are typically required as a condition of the property transfer by the lending institution involved in the transaction. When oil discharges from storage systems are identified, the buyer is often eligible for coverage by the Fund for costs of cleaning up oil contamination. Thus, the Fund is used to help new owners clean up the site for redevelopment.

In FY 2013, there were fewer applications to the Voluntary Response Action Program that also applied for the coverage of eligible clean-up costs and less demand on the Ground Water Oil Clean-up Fund from redevelopment activities. However, as Maine's economic climate improves we are optimistic that more properties will undergo redevelopment.

### H. 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 Fund balance that is sufficient to clean up future releases that threaten public health and sensitive geologic areas. When the Department becomes aware of a contaminated site, the site is assessed to determine the risk to human health from contamination of soils, surface water, groundwater, indoor air and drinking water supplies. The list of sites is prioritized based on the risk to human health.

Table 5 lists the number of sites requiring long term remedial work in each of the past five years. This list includes all sites requiring long term clean up where the remedial effort is not complete. Table 5 also provides the number of sites requiring long term remedial actions that have been completed or “closed” in each of the past 5 years.

	Closed	Remaining
2013	141	478
2012	158	469
2011	105	519
2010	127	497
2009	173	441

<sup>5</sup> See 38 MRSA § 561

Figure 2 illustrates the number of long-term petroleum remediation sites that have been cleaned to the Department’s satisfaction using the Ground Water Oil Clean-up Fund from 2009 through 2013. The figure includes only sites that were referred to the Department’s Division of Technical Services; it does not include sites that were successfully remediated with oversight from spill response staff in the Division of Response Services. Typically, only sites with substantial contamination are referred to Technical Services for ground water investigation and longer term remedial efforts. Petroleum spills that can be cleaned up immediately or only require short term oversights are not included in this Figure. Prompt response continues to be the key to minimization of damages and the associated costs.

Figure 2 also illustrates the number of new remediation sites added each year from 2009 through 2013. As this number fluctuates, managing expenditures through the prioritization of sites and cleaning sites to levels commensurate with the degree of risk posed will remain an important function for the Department. Revenue and expenditures will be carefully monitored to ensure they remain in alignment.

**Figure 2:  
LONG-TERM PETROLEUM REMEDIATION PROJECTS  
(Site Closures and New Additions)**

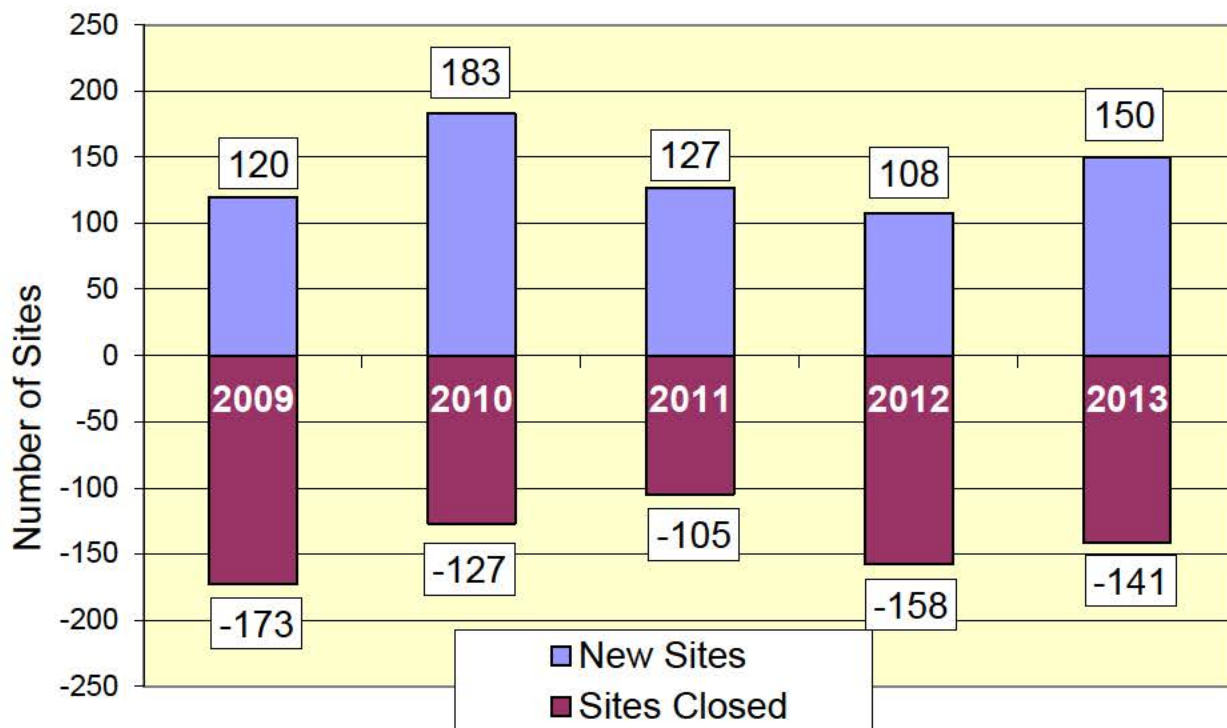


Figure 3 illustrates the makeup of sites referred annually for long-term clean-up activities based on the predominant petroleum product released. Data from 2009 through calendar year 2013 is provided. Sites contaminated by fuel oil and kerosene accounted for 124 of the 152 sites (82 %) in 2013.

*Figure 3: Petroleum Sites Referred To Long-Term Remediation  
Sorted By Product*

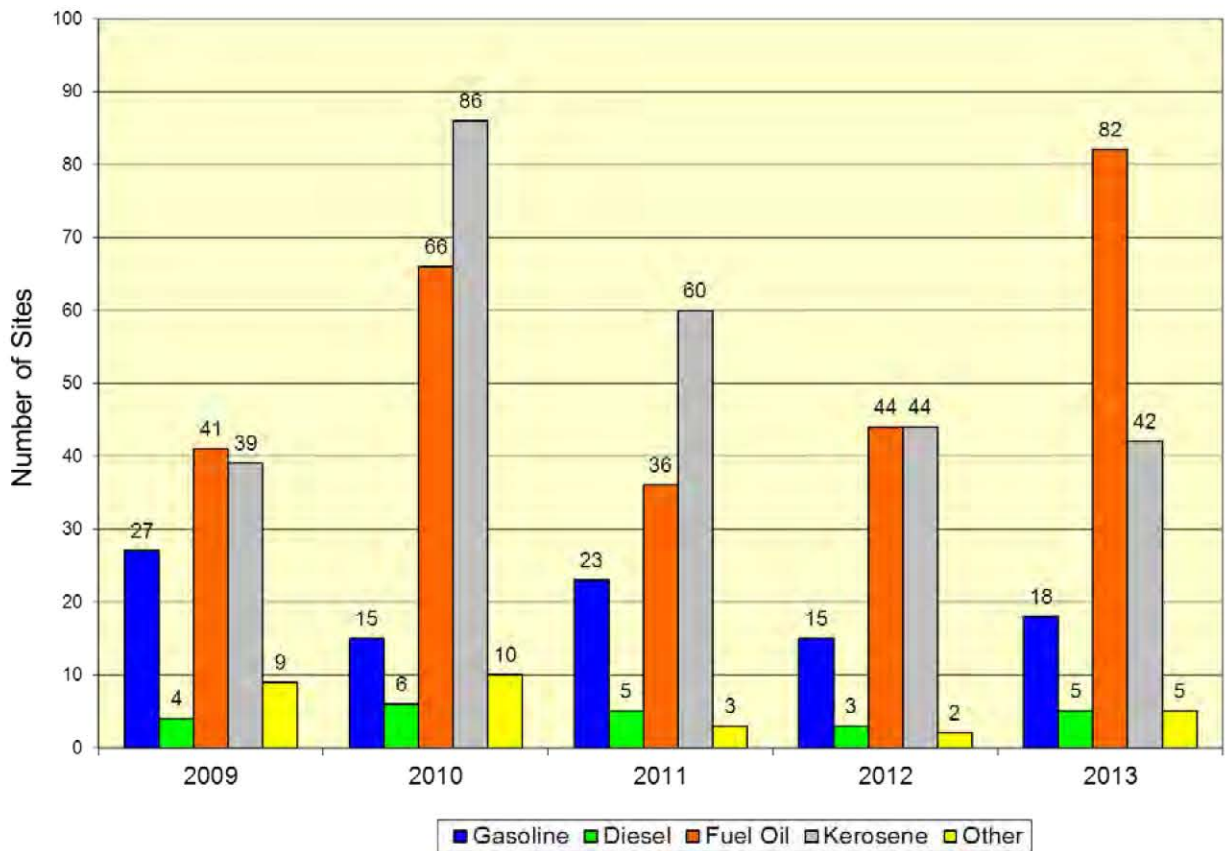
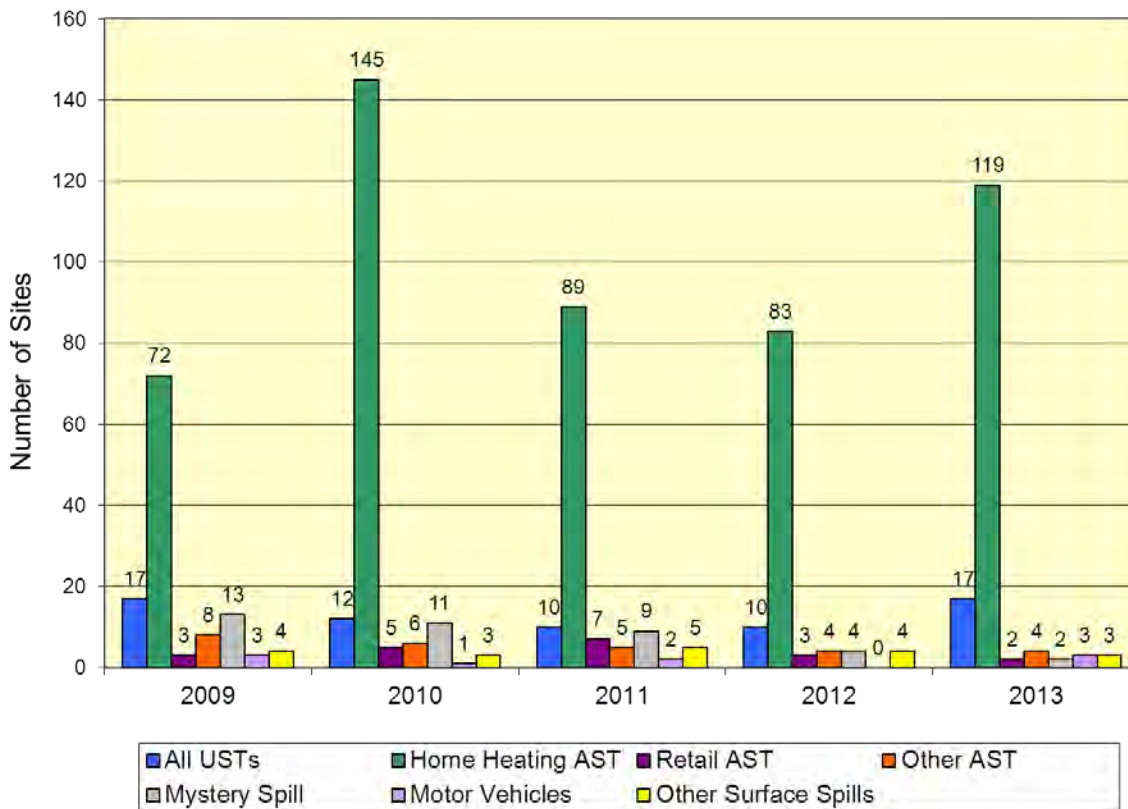


Figure 4 illustrates the make-up of sites subject to long-term clean-up activities based on the source or type of storage tank facility for the past five years. This analysis demonstrates that aboveground oil storage facilities account for 125 sites out of a total of 152 sites (82%) in calendar year 2013. The majority of new petroleum releases consist of kerosene and heating oil that occur at above ground storage tank sites.

**Figure 4: Petroleum Sites Referred To Long-Term Remediation Sorted By Source**



**I. Ongoing Activities**

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

1. Third party inspections

Since July 1, 2003, passing annual inspection forms must be filed with the Department for all underground oil storage tanks. In November 2013, Notices of Violation (NOVs) were issued to 223 non-compliant tank owners. By December 2013, approximately 91% of all registered tank owners had gained compliance with the inspection requirement. Department staff continues to use a combination of inspections, technical assistance and enforcement actions to encourage facility owners to achieve compliance.

## 2. Certified Installers and Inspectors

Installation and testing of underground tanks, piping, and associated equipment and completion of an annual inspection report must be performed by an installer or inspector certified by the Board of Underground Storage Tank Installers. As of December 2013, 80 installers and 49 inspectors were certified. Installers and inspectors must participate in continuing educational training to stay abreast of changing technologies and maintain their certification.

## 3. Maintain field presence

Department staff continues to maintain a field presence through the performance of compliance/technical assistance inspections across the state. In FY 2013 (July 1, 2012 - June 30, 2013) Department staff completed 195 inspections. Inspection efforts targeted motor fuel facilities for which no passing annual compliance inspection was submitted in the previous 12 months, or that had not been inspected by Department staff in 3 years, or where tank ownership had changed.

## 4. Aboveground Storage Tanks (AST)

As of December 2013, there were 162 registered motor fuel AST facilities with underground piping. The State Fire Marshal's Office (SFMO) forwards permit applications for the installation of AST's to the Department to determine compliance with the Department's Chapter 692: Siting of Oil Storage Facilities. During FY 13 staff reviewed 61 applications to the State Fire Marshal for compliance with the AST siting requirements.

The Department submitted the annual *Spill Prevention, Control and Countermeasure Report* to the Joint Standing Committee on Environment and Natural Resources in January 2014, summarizing the Department's activities regarding Aboveground Storage Tanks and implementation of federal requirements.

## 5. Operator Training

The Federal Energy Policy Act of 2005 (Act) requires each state to provide training opportunities for operators of underground oil storage facilities storing motor fuels. Pursuant to the Act, each facility subject to federal underground storage tank regulation must have a trained operator by August 8, 2012. The Department's internet based training program, "TankSmart", was developed in consultation with the regulated community and meets the requirements of the Act. The program has been available since February 2010 and is free of charge. The program is designed to be cost effective and user friendly. Operators may enter a facility specific registration number and are directed to a series of facility specific training modules or may choose to view all the training modules and become certified as a General Operator and operate any underground storage tank system in the state. Upon successful completion of a computer generated test, operators may print a certificate to document the training has been completed. A written training program is also available for those that do not have a computer or prefer a written training and testing program.



As of December 2013, 1,768 individuals had current certifications through this program. Of those, 947 are General Operators who may operate multiple facilities, and 821 facilities have facility-specific trained operators. Many facilities have more than one certified operator.

#### 6. Home Heating Oil Tank Replacement Program

In 2013, \$550,000 was distributed to Maine's Community Action Programs (CAPs) to replace home heating oil tanks and containers (typically 275 gallon tanks or 55 gallon containers) determined to be at high risk of failure. The replacement of high risk tanks and containers with new tanks prevents the need for costly clean-ups. The amounts of the contracts awarded to the CAPs ranged from approximately \$22,000 to \$113,000. The awards were based on the proportional number of Low Income Heating Energy Assistance Program (LIHEAP) clients in each CAP. The CAPs received an administrative fee ranging from \$250 to \$325 per tank depending on the geographical area served. In 2013, 100 single walled fiberglass reinforced plastic tanks were installed for use with home heating fuel.

The Department also expended \$192,000 in 2013 to replace tanks determined to be at high risk of leaking in source water protection areas. This was less than the amount expended in 2012 (\$245,000) for this purpose. The Department replaced 73 at risk tanks located within the wellhead protection area in South Berwick (year two of this project), Clinton, Freeport, and at individual locations statewide. Homeowner eligibility for this funding is established considering the risk to public health and use of a means test to evaluate tank owner income relative to the mean county income.

#### J. Conclusion

The Ground Water Oil Clean-up Fund provides an important source of funding to clean-up oil contaminated sites to protect public health and the environment, and to support the continuing economic value of properties. The Department has implemented a variety of strategies to control costs, reduce expenditures, and prioritize spending from the Fund. The Fund Insurance Review Board provides effective guidance and oversight to the Department regarding these measures, and has placed a heightened focus on the cost effectiveness of remedial measures, including targeted removal of contaminated soil and consideration for re-use of properties. The Department's implementation of new health based clean-up guidelines has dramatically improved the cost effectiveness for the clean-up of oil discharges from UST and AST facilities.