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# Annual Report of the Fund Insurance Review Board

Maine Department of Environmental Protection

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

**March 15, 2013**

This report satisfies the requirements of 38 M.R.S.A. § 568-B(2-D), 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 Environment and 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 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.**

38 M.R.S.A. § 568-B(2-D). This report represents the Board's and the Department's experience in administering the Fund, and is divided into two sections. The first section (Part I) covers the Board's activities for the period beginning January 1, 2012 and ending December 31, 2012, 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 B, highlights the Board's and FAME's experience in administering this Program through June 30, 2011 (fiscal year basis). The second part of this report (Part II) addresses the Department's administration of the Fund including the specific issues referred to above relating to the adequacy of the Fund.

## PART I

### FUND INSURANCE REVIEW BOARD

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

The Fund Insurance Review Board (“FIRB” or “Board”) is established (1) to 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, and (2) to monitor income and disbursements from the Ground Water Clean-up Fund. 38 M.R.S.A. § 568-B(1).

#### B. FIRB Governing Law and Composition

In 2011, the Legislature enacted L.D. 671 (P.L. 2011, ch. 243, eff. Sept. 28, 2011) amending the laws governing the Fund Insurance Review Board, primarily 38 M.R.S.A. § 568-B. The amendments changed the makeup of the Board to include, in addition to the DEP Commissioner and the State Fire Marshal or their designees, 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 total number of ten members remains the same under the new law; however, the Appeals Panel was changed from five to four public members. As of April, 2012, nine members currently serve on the Board.

The Fund Insurance Review Board fulfilled its duties in 2012 through participation of the following members:

Michael Bonzagni*, Chair	Jamie Py
Richard Knowlton*	Robert Bender, Sr. ( <i>term expired</i> )
Brenda Beaulieu*	Ron Dyer, DEP ( <i>resigned position</i> )
Dirk Brunner *	Richard McCarthy, SFMO
Patrick Coughlin ( <i>new in 2012</i> )	Leslie Anderson ( <i>new in 2012</i> )
Melanie Loyzim, DEP ( <i>new 2012</i> )	

*\*Appeals panel member*

L.D. 671 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 2012.

L.D. 671 alters the duties and responsibilities of the Board by including reviewing DEP priorities for disbursements from the Ground Water Oil Clean-up Fund and making recommendations to the commissioner on how the Fund should be allocated.

### **C. Appeals Activities**

During the calendar year ending December 31, 2012, the Fund Insurance Review Board processed a total of six appeals, three of which were heard by the Appeals Panel. In two of those cases, the agency decisions were upheld in part and overturned in part, and in one case the appeal was dismissed. Two appeals were withdrawn, and one appeal has been continued. In carrying out its responsibilities, the Appeals Panel held three meetings during which appeal hearings were conducted. Attached, as **Exhibit A**, is a copy of an analysis of 2012 appeals by case.

### **D. Regulatory Activity**

In December 2012, the Fund Insurance Review Board approved proposed amendments to Chapter 4, Oil Import Fees, for sending to the Secretary of State's Office for public comment. The proposed amendments would reduce the additional fees that are assessed under 38 M.R.S.A § 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.

**EXHIBIT A**

**Case-by-Case Analysis of Appeals for 2011**

**FUND INSURANCE REVIEW BOARD - 2012 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 Sheri Bridges	12/06/11	12/08/11		02/06/12				Withdrawn by Appellant
2 Mary Levesque	12/12/11	12/19/11	none rec'd	02/06/12			02/07/12	Dismissed - untimely
3 Kettle Cove Marina, Inc	03/14/12	03/21/12	05/22/12	06/19/12			06/19/12	upheld in part / overturned in part
4 Daniel D. Harris	06/26/12	08/06/12		08/28/12			08/28/12	upheld in part / overturned in part
5 Donna O'Brien	09/13/12			10/30/12				Withdrawn by Appellant
6 Antoinette Brown	09/18/12	10/01/12	09/18/12	10/30/12	01/23/13	appellant sick		
7								

appeals heard	3
withdrawn	2
carried to 2013	1
appeals processed	6
DEP/SFMO upheld	
DEP/SFMO overturned	
DEP/SFMO upheld/overturned in part	2
Dismissed/Remanded	1

**EXHIBIT B:**

**Plymouth Waste Oil Clean-up Loan Program Report**

## Waste Oil Clean-Up Fund<sup>1</sup>

<b>Cash Balance (7/01/11)</b>		<b>\$2,901,126.43</b>
<b>Transfer from Waste Motor Oil Revenue Fund</b>	<b>\$844,068.44</b>	
<b>Total cash increase</b>		<b>\$844,068.44</b>
<b>Sub Total</b>		<b>\$3,745,194.87</b>
<b>Payments to Recipients</b>	<b>\$3,745,194.87</b>	
<b>Total cash decrease</b>		<b>-\$3,745,194.87</b>
<b>Cash Balance (6/30/12)</b>		<b>\$0</b>

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 site”). The Plymouth Waste Oil Loan Program (“Plymouth Program”) was established at 10 M.R.S.A. § 1023-M and stated, 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.”

More than forty businesses, municipalities, and school districts borrowed from the Plymouth Program to pay response costs associated with the Plymouth site. It was originally anticipated that borrowers in the Plymouth Program would seek loans or loan increases from the Fund to pay their shares of the cost of the final remedial action, but those costs were ultimately funded through the Waste Motor Oil Disposal Site Remediation Program (“Waste Oil Program”), discussed below. In addition, as a result of legislative changes in 2011 to both the Waste Oil Program and the Plymouth Program, the Plymouth Program is effectively terminated. Sections 1023- L (the Fund) and 1023-M (the Plymouth Program) of Title 10 Maine Revised Statutes were repealed as of December 31, 2012.

While the Fund was expected to be valuable in offsetting the impact of the cost of the final remedial action to the “settling” potentially responsible parties (PRPs) at the Plymouth site, it was also clear that the Fund would be inadequate to cover this cost for all borrowers. As a result, the Waste Oil Program was created through legislation enacted in the First Regular Session of the 123<sup>rd</sup> Legislature also aimed at providing financial assistance for response costs to eligible parties. Created by Public Law 2007, Chapter 464 (10 M.R.S.A. §§ 1020, 1020-A), this program authorized FAME to issue up to \$30,000,000 in revenue obligation bonds to pay the past and future response

<sup>1</sup>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 2012 begins July 1, 2011 and ends June 30, 2012.

costs of eligible parties at Plymouth and at 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 Fund was expected to be replenished upon application of bond proceeds in the form of loan repayments; however, the revenues from the oil premium at the time of the 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 issued bonds in the amount of \$14,495,000, of which \$14,467,117.50 was available for response costs. After payment of future response costs of \$14,233,559, only \$233,558 remained available to reimburse the Plymouth PRPs for past response costs, including repayment of loans. From the amount of \$233,558, the amount of \$107,307.70 represented proceeds of loans and was paid to the Fund (and ultimately transferred to the Underground Oil Storage Replacement Fund pursuant to 10 M.R.S.A. §1023-L(6), together with other principal payments received in the Fund in FY 2011 and FY 2010).

To finally address the shortfall after the bond issuance, a DEP-led stakeholder's process mandated by the 124<sup>th</sup> Legislature took place in 2010. The DEP submitted a report to the Legislature on December 1, 2010 with recommendations significantly affecting the Fund. Legislation was passed on June 3, 2011 mandating that the remaining Plymouth loan balances be treated as if they were grants (essentially forgiven), and that a closing Fund balance be ascertained as of June 30, 2011 and the amount distributed on a pro-rata basis to the Plymouth PRPs toward past costs not covered by bond proceeds. (Previously, amounts remaining in the Fund would have lapsed to the Groundwater Oil Clean-Up Fund when all four waste disposal sites were remediated and all response costs paid.) The Plymouth loan balances were eliminated in June, 2011, and FAME distributed the Fund balance of \$2,901,126.43 (together with other funds made available from the Waste Motor Oil Revenue Fund) to eligible parties in February 2012.

**PART II**

**ADMINISTRATION OF THE FUND:  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



## **Part II: Administration of the Ground Water Oil Clean-up Fund**

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

**March 2013**

Contact: Melanie Loyzim, Director  
Bureau of Remediation and Waste Management  
Maine Department of Environmental Protection

## PART II

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

#### **A. Introduction**

This report is submitted pursuant to 38 M.R.S.A. § 568-B(2-D), which requires an annual report be submitted to the Legislature 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. 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 accepted 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**

Table 1 illustrates financial activity in the Ground Water Oil Clean-up Fund for fiscal year (FY) 2012 (July 1, 2011 – June 30, 2012). A balance of \$6,113,120 was carried forward from FY 2011. The net balance for FY 2012 was \$19,991,982, including the carry forward balance. Expenditures totaled \$12,018,284, and the net fund availability at the end of the fiscal year was \$6,372,561.

In FY 2012, there was a decrease of \$479,076 in income and a decrease of \$3,487,831 in expenditures compared to FY 2011. The significant decrease in expenditures between fiscal years is due in part to the Department's efforts to complete the clean-up of several heavily contaminated sites in FY 2011 combined with the absence of new discoveries of heavily contaminated sites in FY 2012. The Department also continues to implement measures to control costs. 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.

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, the Fund Insurance Review Board (FIRB) has adopted a rule<sup>2</sup> imposing a surcharge when the balance in the Fund falls below \$5 million dollars. Although the surcharge of 20¢ per barrel of gasoline and 10¢ per barrel of other petroleum products was in effect throughout FY 2012, the surcharge 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.

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

Table 1 provides a summary of the income, expenditures and fund balance for FY 2012.

TABLE 1	
STATEMENT OF CASH POSITION	
GROUNDWATER OIL CLEAN-UP FUND	
AT JUNE 30, 2012	
BALANCE FORWARD (July 1, 2011)	\$ 6,113,120
INCOME	\$16,391,783
Minus Fee Refunds	- \$ 2,512,921
NET INCOME	\$13,878,862
NET BALANCE	\$19,991,982
EXPENDITURES	
Personal Services	\$ 4,346,669
All Other	\$ 5,723,604
Capital	\$ 6,458
Indirect Cost Transfers	\$ 1,615,770
Other Transfers (Excluding FAME)	\$ 315,783
Transfers to FAME	\$ 10,000
NET EXPENDITURES	\$12,018,284
CASH BALANCE (June 30, 2012)	\$ 7,973,698
INDIRECT COST OBLIGATION (June 30, 2012) (untaken)	\$ 98,409
METALLIC MINERAL MINING FUND OBLIGATION (untaken)	\$ 250,000
ENCUMBRANCES AND OBLIGATIONS (untaken)	\$ 1,252,728
NET FUND AVAILABILITY (June 30, 2012)	\$ 6,372,561 *
<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 2012	\$13,878,862
FY 2011	\$14,357,938
FY 2010	\$13,685,980
FY 2009	\$16,043,260
FY 2008	\$16,829,032

The net fund income includes all revenue received during FY 2012 minus fee refunds in the amount of \$2,512,921. 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>3</sup> Refunds during FY 2012 increased by \$271,952 compared to FY 2011. The amount refunded in past years is listed in Table 3 below:

FY 2012	\$2,512,921
FY 2011	\$2,240,969
FY 2010	\$2,445,860
FY 2009	\$2,723,584
FY 2008	\$2,353,925

### C. Fund Adequacy

The net fund availability (cash balance minus encumbrances) in the Fund was \$6,372,561 at the end of FY 2012 (June 30, 2012). This represents an increase of \$259,441 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:

<sup>3</sup> See 38 M.R.S.A. § 569-A(7) and chapter 685 of Department rules, 06-096 CMR 685.

- Close technical oversight including “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 UST and AST facilities. Most of these cost savings have been realized at sites requiring soil remediation. By way of example, the Department estimates that between \$2.8 and \$3.2 million was saved at 30 clean-up sites in 2010 due to the Department’s use of revised health risk based soil remediation guidelines.

#### **D. Status of Applications for Coverage of Clean-Up Costs**

Tables 4 and 5 provide 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>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 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 to the Fund Insurance Review Board (see Part I of this report). The deductible amounts are established in statute<sup>5</sup>.

From July 1, 2011 through June 30, 2012, the Department received 4 applications for the coverage of clean-up costs at UST facilities. By comparison, in FY 2011, the Department received 6 applications.

During FY 2012, 197 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 4 other applicants were ineligible for fund coverage. This represents a decrease of 10 eligible applicants compared to FY 2011.

Table 4 summarizes application activity from aboveground and underground oil storage facilities in FY 2012.

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<sup>4</sup> See 38 M.R.S.A. § 568-A.

<sup>5</sup> See 38 M.R.S.A. § 568-A(2).

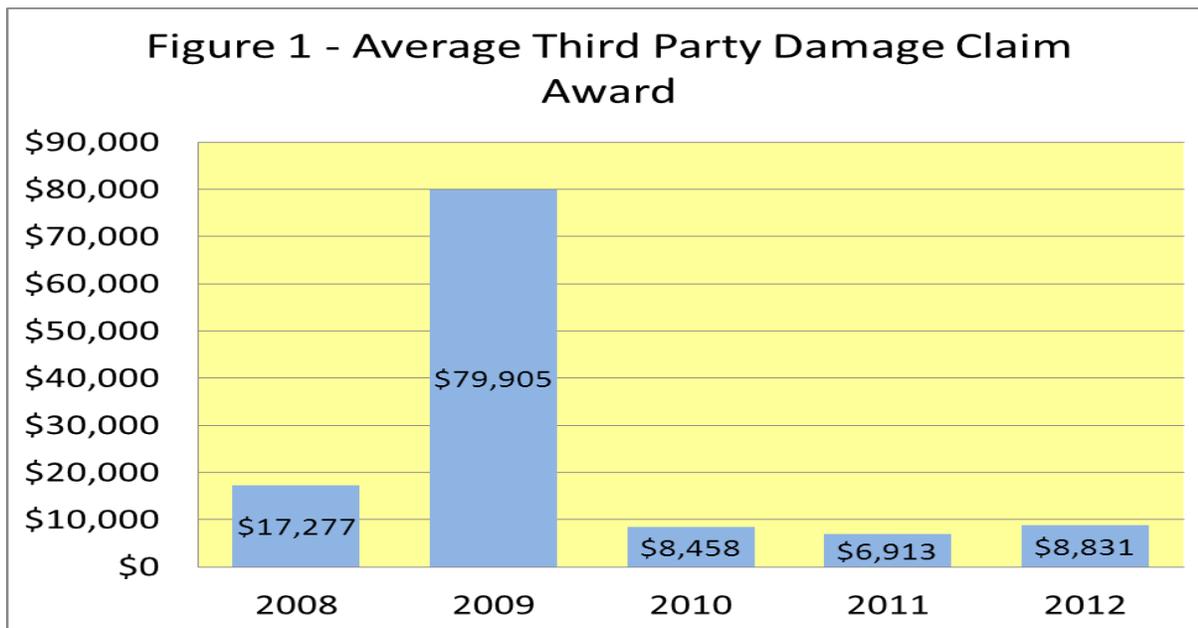
TABLE 4	
Applications for coverage of clean-up costs in FY 2012	
Total Received FY 12	205
Eligible	201
Ineligible	4

Table 5 totals the application activity from both underground oil and aboveground oil storage facilities from the inception of the program through the end of FY 2012.

TABLE 5	
Total Applications (July 1, 1990 – June 30, 2012)	
Total Received	4,049
Total Eligible	3,875
Total Ineligible	174

### **E. Administration of Third Party Claims**

The Department is currently processing 11 claims against the Ground Water Oil Clean-up Fund for coverage of damages to third parties. During FY 2012, the Department completed processing four (4) third party claims and awarded a total of \$26,494 to third party claimants. One (1) claim was resolved without a cash award in FY 2012. The average cash award to third party claimants in FY 2012 was \$8,831. The average cash award to third party claimants in FY 2011 was \$6,913. Figure 1 illustrates the average cash award to third party claimants from 2008 through 2012. 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. 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.



#### **F. Compliance with Tank Abandonment Schedule**

Currently, there are about 4,040 conforming underground oil storage tanks registered and in operation in Maine. As of December 2012, 35,734 non-conforming underground tanks have been properly removed or abandoned in place since removal deadlines were enacted over twenty years ago. This includes 34 non-conforming tanks that were removed in 2012. 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 3,850 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 66 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 Fund is used to clean up 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 2012, there were fewer applications to the Voluntary Response Action Program than anticipated 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>6</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 6 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.

	Closed	Remaining
2012	158	463
2011	105	511
2010	127	495
2009	173	441
2008	99	494

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<sup>6</sup> See 38 M.R.S.A. § 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 December 2008 through December 2012. 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: LONG-TERM PETROLEUM REMEDIATION SITES  
CLOSED SINCE JANUARY 2000**

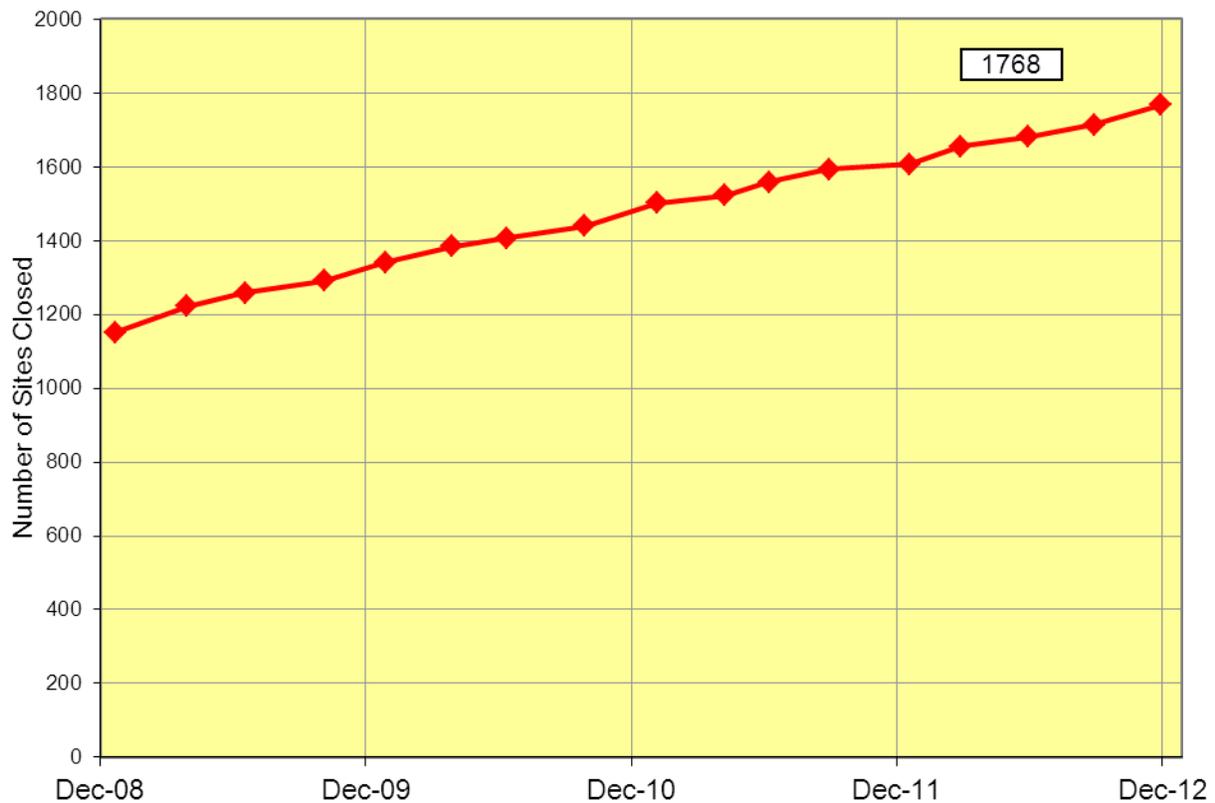


Figure 3 illustrates the number of active, long-term remediation sites from December 2008 through December 2012. As this number fluctuates, managing expenditures through the prioritization of sites and cleaning sites to levels commensurate with the degree of risk posed will remain an important function for the Department. Revenue and expenditures will be carefully monitored to ensure they remain in alignment.

**Figure 3: ACTIVE SITES IN LONG-TERM REMEDIATION**

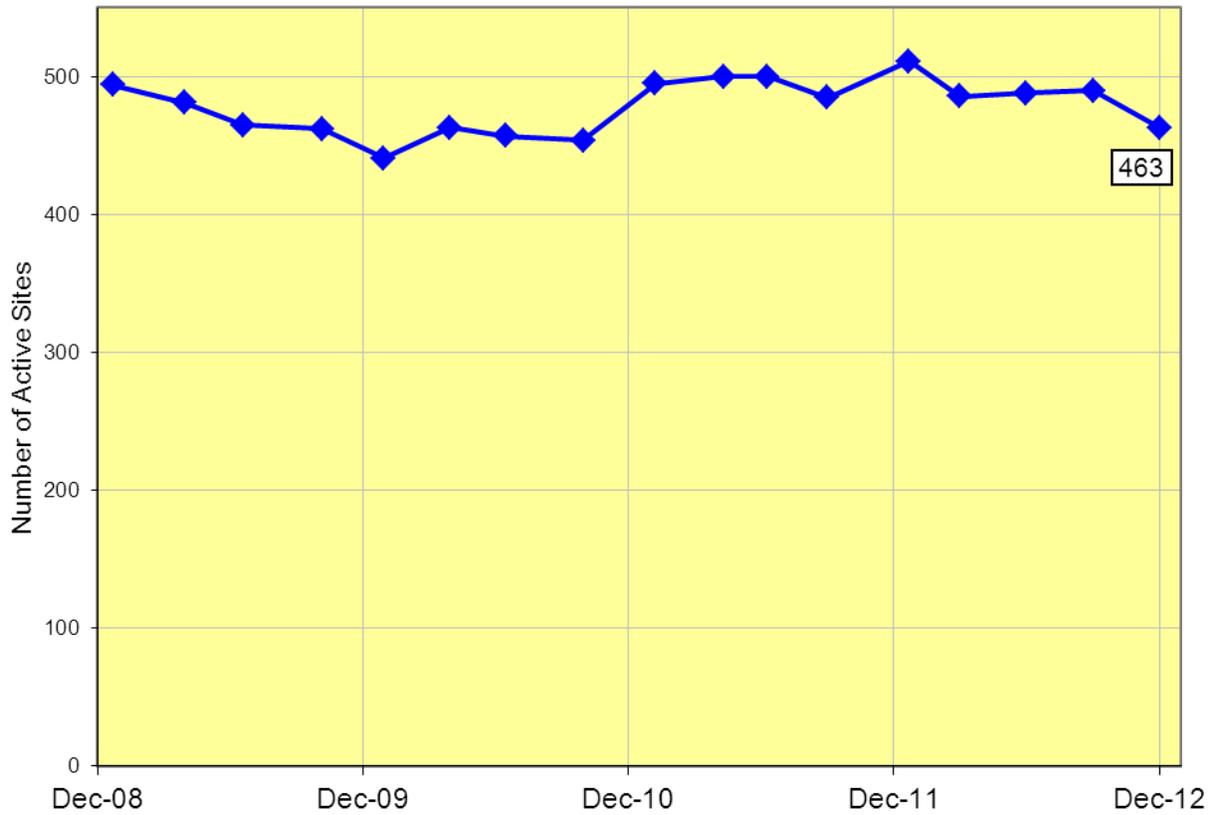


Figure 4 illustrates the makeup of sites referred annually for long-term clean-up activities based on the predominant petroleum product released. Data from 2008 through calendar year 2012 is provided. Sites contaminated by fuel oil and kerosene accounted for 88 of the 108 sites (81.5 %) in 2012.

*Figure 4. Petroleum Sites Referred To Long-Term Remediation by Product*

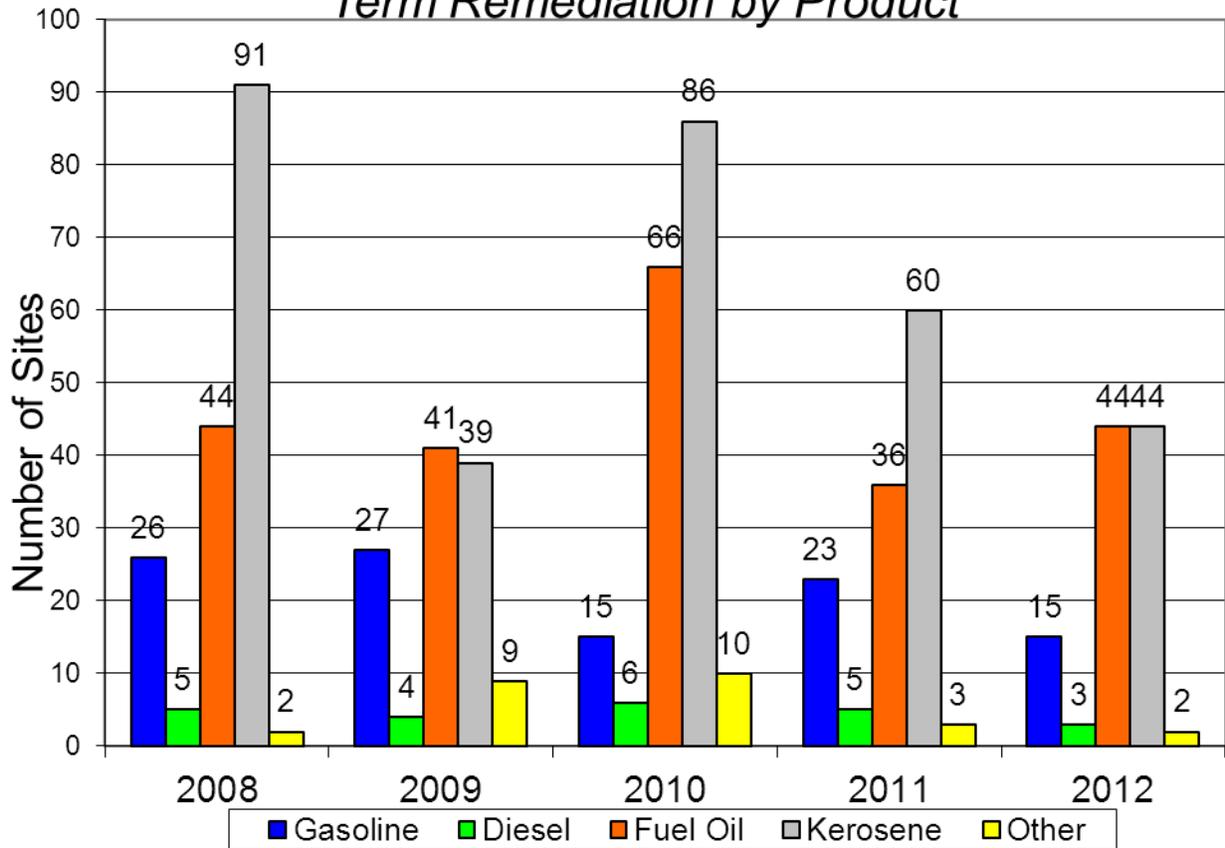
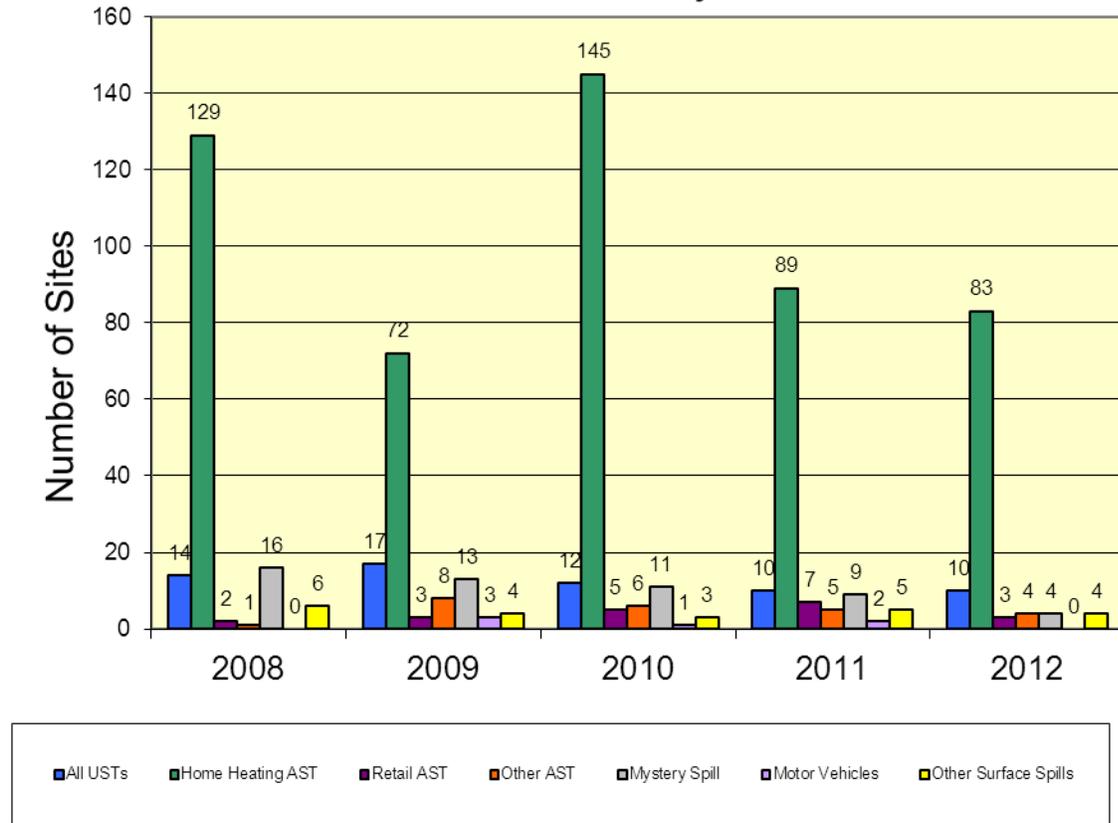


Figure 5 illustrates the make-up of sites subject to long-term clean-up activities based on the source or type of storage tank facility for the past five years. This analysis demonstrates that aboveground oil storage facilities account for 90 sites out of a total of 108 sites (83.3%) in calendar year 2012. The majority of new petroleum releases consist of kerosene and heating oil that occur at above ground storage tank sites.

*Figure 5. Petroleum Sites Referred To Long-Term Remediation 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 2012, Notices of Violation (NOVs) were issued to 249 non-compliant tank owners. By December 2012, 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 2012, 75 installers and 56 inspectors were certified.

### **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 2012 (July 1, 2011 - June 30, 2012) Department staff completed 444 inspections. 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 Department staff in 3 years, or where tank ownership had changed.

### **4. Aboveground Storage Tanks (AST)**

Legislation effective in August 2006 required AST facilities used for motor fuel with underground piping to be registered with the Department and submit passing annual underground piping inspection reports. The registration and inspection deadlines for all motor fuel facilities except diesel included a registration deadline of January 1, 2007, and annual passing inspection reports to be submitted beginning July 1, 2007. Diesel facilities had until January 1, 2009 to register with the Department and were required to submit an annual passing inspection report beginning July 1, 2009.

As of December 2012, there are 157 registered motor fuel AST facilities with underground piping registered in the database.

All motor fuel AST facilities with underground piping without leak detection installed prior to June 24, 1991 were required to be brought into full compliance with the leak detection requirements of the Department's Rules (06-096 CMR 691) by January 1, 2011. Forty (40) registered motor fuel facilities with underground piping were required to upgrade their underground piping to current leak detection standards by January 1, 2011. Of these 40 facilities, 24 facilities complied with the deadline by either upgrading the piping, removing the facilities or taking the facilities out of service. Eleven (11) facilities had signed contracts with certified tank installers and completed their upgrades during the summer of 2011. The remaining 5 facilities received Notices of Violation (NOVs) from the Department in May of 2011. As of December 2012, all registered AST motor fuel

facilities with underground product piping either have upgraded their underground piping to current standards or discontinued use of the piping and are awaiting proper removal.

Above ground tanks used for heating oil continue to be a source of significant discharges to groundwater and surface water bodies (See Figures 4 and 5).

## 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, called 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 successfully 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 January 2012 1,972 individuals had been certified through this program. Of those, 977 are General Operators (includes some out of state individuals) who may operate multiple facilities, and 709 facilities have facility-specific trained operators. Many facilities have more than one certified operator. The Department's rule, *CMR 06-096, Chapter 693, Operator Training for Underground Oil and Hazardous Substance Storage Facilities*, was the subject of an extended public comment period. The Rule became effective on August 4, 2012.

## 6. Home Heating Oil Tank Replacement Program

In FY 2011 and 2012, \$500,000 each year was budgeted and distributed to Maine's Community Action Programs (CAPs) and used 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 range from approximately \$20,000 to \$113,000. The awards are based on the proportional number of Low Income Heating Energy Assistance Program (LIHEAP) clients in each CAP. The CAPs receive an administrative fee ranging from \$201 to \$288 per tank depending on the geographical area served. In 2012 single walled fiberglass reinforced plastic tanks were installed for use with home heating fuel. Forty-five such tanks were installed through the CAPs in 2012. \$550,000 is budgeted for distribution to Maine's Community Action Programs (CAPs) beginning in FY 2013.

The Department has also budgeted \$245,000 for FY 2013 to replace tanks identified by the Department as at high risk of leaking in source water protection areas. This is the same amount expended in 2012 for this purpose. The Department will replace at risk tanks located within the wellhead protection area in South Berwick (year two of this project) and Dixfield. 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.