

Report to the Joint Standing Committee
on
Environment and Natural Resources

126th Maine Legislature (Second Session)

Waste Motor Oil Disposal Site Remediation Program

January 15, 2014

Submitted by:
Finance Authority of Maine
Department of Environmental Protection
Maine Revenue Services

Introduction

In accordance with 10 MRSA §1020-B¹, this constitutes the:

1. Biennial joint report of the Finance Authority of Maine (“FAME”) and the Maine Department of Environmental Protection (“DEP”) regarding the Waste Motor Oil Disposal Site Remediation Program (the “program”); and
2. The annual joint report of FAME and the State Tax Assessor, by and through Maine Revenue Services (“MRS”), regarding the program. Pursuant to 10 MRSA §1020-B(2), FAME and MRS may submit their annual report as part of the FAME-DEP biennial report in years in which the biennial report is due.

The report consists of:

1. A brief history of the events which led to the creation of the program, provided by DEP;
2. A summary of the related hazardous waste law provided by DEP;
3. A summary of the program and status report of the program provided by FAME;
4. DEP’s status report on the four waste motor oil disposal sites subject to the program;
5. FAME and MRS’s report of revenues collected through calendar year 2013; and
6. Conclusions.

Agency contact information can be found on page 10.

¹ 10 MRSA §1020-B. Status reports

The following reports related to the waste motor oil disposal site remediation program under section 1020-A must be submitted to the joint standing committee of the Legislature having jurisdiction over natural resources matters.

1. Program report. By January 15, 2010 and every 2 years thereafter, the authority and the Department of Environmental Protection shall report on the status of the waste motor oil disposal site remediation program under section 1020-A.

2. Funding report. By February 15, 2010 and every year thereafter, the authority and the State Tax Assessor shall report the revenue collected pursuant to section 1020, subsection 6-A for the preceding calendar year. The report may be incorporated into the biennial report required under subsection 1. The joint standing committee of the Legislature having jurisdiction over natural resources matters shall determine, beginning in 2013 and every odd-numbered year thereafter, whether the premium imposed pursuant to section 1020, subsection 6-A may be reduced or eliminated in a manner that does not adversely affect the ability of the authority to provide for the full and timely payment of the principal of, interest on, redemption premiums on or other costs of all revenue obligation securities issued pursuant to section 1020-A that remain outstanding as those costs become due or adversely affect the security of those revenue obligation securities and may submit legislation related to the determination and report required under this subsection.

1. History of the Portland Bangor Waste Oil Company (DEP)

Beginning in 1951, Mr. George West (now deceased) began operating a waste oil recycling business known as the Portland-Bangor Waste Oil Company (PBWO). The company initially disposed of motor oil sludge in a gravel pit in Wells, Maine. The business then expanded into collecting used motor oil from military bases, auto dealerships, municipalities, government agencies, local garages, industries, school districts, and utility companies throughout Maine and other parts of New England. The waste oil was stored in tanks in Wells, and then the operation expanded to at least four other locations in Maine: Casco, Ellsworth, Plymouth, and Presque Isle. Sometimes the waste-oil was contaminated with used solvents. PBWO used settling tanks to stratify the used oil, decanting the lighter oil and selling it as a fuel supplement, while selling the heavier oils as dust suppressant on dirt roads. However, some of the waste oil and solvents were spilled or disposed at the five sites, contaminating soil and groundwater. George West ceased active operations of the PBWO in 1980.

2. The Uncontrolled Hazardous Substances Sites Law (DEP)

To address pre-existing contamination at sites like PBWO, in 1983 the Maine Legislature created the Uncontrolled Hazardous Substance Sites Program (Uncontrolled Sites Program)². Under the Uncontrolled Sites Law:

- Hazardous substances are broadly defined to include hazardous wastes, waste oil and most other pollutants;
- DEP is authorized to designate locations where hazardous substances are located as Uncontrolled Hazardous Substance Sites;
- DEP is authorized to investigate and clean up uncontrolled hazardous substance sites, or to require responsible parties to undertake the cleanup;
- DEP is authorized to recover the cost of investigations, cleanup and other “response costs” from responsible parties. Liability is joint and several;
- Responsible parties are individuals or companies that:
 - Owned or operated the site at any time after the hazardous substance arrived there;
 - Generated the hazardous substances handled at the site; or
 - Transported the hazardous waste to the site.

The DEP obtained all of the business records of the PBWO, and was able to identify hundreds of former customers as Potential Responsible Parties (PRPs) for the purpose of recovering its cleanup expenditures. The DEP is obligated to investigate and remediate over a thousand potential uncontrolled sites in the state, and aggressively pursues cost recovery from PRPs at these sites because it is the primary source of funding available for the work. Hazardous Waste bonds to undertake these activities have dwindled in recent years, and there is no other revenue stream to fund the Uncontrolled Sites Program.

² 38 MRSA §1361 *et seq.*

3. The Waste Motor Oil Disposal Site Remediation Program (FAME)

In 2007, at the urging of affected Maine businesses, the Maine Legislature established the Waste Motor Oil Disposal Site Remediation Program at 10 MRSA §1020-A. The law, as amended, was intended to help eligible PRPs pay their share of response costs associated with the cleanup of the four PBWO sites in Casco, Ellsworth (the Robbins property), Plymouth (the Hows Corner Superfund Site), and Presque Isle.³

The law originally authorized FAME to pay (with bond proceeds) the past and future response costs of certain PRPs including the following types of businesses:

1. State licensed new car and truck dealers;
2. State licensed used car and truck dealers;
3. Some commercial auto repair shops;
4. Some fleet auto repair shops;
5. Some shops that performed repairs on some special or other mobile equipment; and
6. Parties that sent 110 gallons or less of waste oil to a site.

The program authorized FAME to issue up to \$30,000,000 in revenue obligation bonds with the state's moral obligation to fund the response costs of eligible PRPs at the sites. FAME was also authorized to issue up to \$5,000,000 in bonds as capital reserve funds for the bonds issued to pay response costs. The bond payments were to be made with revenues collected originally from a premium on motor oil changes that was effective from October 1, 2007⁴ until July 31, 2008; then from a premium collected on the sale of bulk motor vehicle oil beginning August 1, 2008;⁵ then, from October 1, 2009 until June 30, 2011, from the bulk motor vehicle oil premium plus a premium on the sale of pre-packaged motor oil⁶; and, since July 1, 2011, from premiums imposed on motor vehicle oil that is either diesel engine crankcase oil, gasoline engine crankcase oil sold or distributed in a container with a volume of 5 gallons or less, gasoline engine crankcase oil sold or distributed in a container with a volume of more than 5 gallons, or any other motor vehicle oil that is sold or distributed in a container with a volume of 16 gallons or less⁷. The revenues are deposited in the Waste Motor Oil Revenue Fund (the "Fund") established at 10 MRSA §1020. Once deposited to the Fund, the premiums are used by FAME to pay debt service on the \$14,495,000 Finance Authority of Maine Waste Motor Oil Revenue Bonds 2009 Series A (Federally Taxable) issued by FAME in September 2009. In addition, FAME is authorized to pay from the Fund its reasonable costs incurred in administering the Fund.

³ The DEP and PRPs had already reached agreement on expenditures for the fifth site in Wells, facilitated in part by a grant program administered by FAME.

⁴ Pursuant to P.L. 2007, chapter 464, section 6.

⁵ Pursuant to P.L. 2007, chapter 618, section 11.

⁶ Pursuant to P.L. 2009, chapter 213, section KKK. This legislation became effective May 28, 2009, at which time the provision expanding the definition of motor vehicle oil subject to the premium also became effective. The effective date for the implementation of the premium on pre-packaged motor oil was established as October 1, 2009. Since the oils and lubricants captured by the expanded definition of motor vehicle oil are only sold and distributed as pre-packaged motor vehicle oil, and not as bulk, the premium on the new oils and lubricants also became effective October 1, 2009 as a practical matter.

⁷ Pursuant to P.L. 2011, chapter 211, section 6-A.

On September 30, 2009, FAME issued its \$14,495,000 Finance Authority of Maine Waste Motor Oil Revenue Bonds 2009 Series A (Federally Taxable) (the “2009 Bonds”), of which \$14,467,117.50 was available for the benefit of the Plymouth site. The Certificate of Determination issued by FAME in connection with the bond closing found that the total response costs of the Plymouth PRPs was \$21,417,185.93, but the amount of the issuance was reduced in large part by the lack of revenues to support any more debt. Thus, the amount unpaid to eligible Plymouth parties after the bond issuance was \$6,950,068.43 (the “unpaid Plymouth response costs”). (This amount was reduced by \$12,741.09 attributable to response costs associated with the Maine National Guard, since the Maine National Guard was subsequently deemed ineligible at that time.)

It was originally anticipated that the bonds would be issued in tranches, or series, as statutory pre-conditions at each site were met. However, developments leading up to the issuance of the 2009 Bonds suggested that revenues, even as amplified by the expanded premium which was to become effective October 1, 2009, would be insufficient to fully cover response costs at all four sites. The original per-motor-vehicle oil change fee of \$1-\$3 (depending on vehicle size) did not generate revenues projected by the Maine Auto Dealers Association and also proved to be administratively burdensome for many small businesses. Enforcement by MRS was also difficult, due to the number of entities collecting and paying the premium. It was thought that projections may have fallen short due in part to an underestimation of the “do-it-yourself” factor. The per-motor-oil-change premium was repealed in 2008 and replaced with a premium on the first sale or distribution of bulk motor vehicle oil of \$1.10/gallon for gasoline engine oil and \$.35/gallon for diesel engine oil. Again, those revenues did not meet expectations as calculated by the Maine Auto Dealers Association. In 2009, the revenue stream was amended a second time, to expand the definition of motor vehicle oil and expand the premium to sales of prepackaged motor oils, effective October 1, 2009. As a result of the uncertainty around the revenue stream, FAME engaged PB Consult, a division of PB Americas, Inc., to conduct a revenue forecast over a twenty year period, prior to issuing the 2009 Bonds. The revenues forecasted to be generated were taken into account in determining the amount of the 2009 Bonds. Revenues were still not anticipated to be sufficient to support the original \$30,000,000 capacity of the program. Among other factors, it was determined that increased vehicle efficiency and lubricant efficiency would drive down purchases of motor vehicle oils. Without satisfactory revenue projections, FAME did not anticipate the issuance of additional bonds to complete payment of response costs at Plymouth or to pay response costs at the other sites.

In 2009, when it became apparent that the revenues would not support a bond issuance for the total response costs of the Plymouth PRPs, FAME promulgated an agency rule. Among other provisions, Chapter 321 of the Rules of the Finance Authority of Maine established a procedure for prorating available funds among eligible parties.

During the 124th Legislature (First Regular Session), several parties sought further amendments to the program. Rather than enact piecemeal reforms, the Joint Standing Committee on Natural Resources (the “committee”) approved (subsequently enacted by the full Legislature) a *Resolve to Review the Waste Motor Oil Disposal Site Remediation Program* dated April 13, 2010, mandating that the DEP coordinate a review of the program, invite the participation of stakeholders with interests in the program, and report the findings of the review to the

committee together with any proposed legislation. That process took place beginning in May 2010 and culminated in the DEP's report dated December 1, 2010, which recommended changes to the program and to the Plymouth Waste Oil Loan Program administered by FAME.⁸ The recommendations and proposed legislation were designed to make resources available to complete payment of the unpaid Plymouth response costs and to provide reimbursement to the DEP for response costs at other sites. The recommendations and proposed legislation did not propose to fundamentally alter the revenue stream, except to make changes designed to close an apparent loophole in collections. On June 3, 2011, the 124th Legislature (Second Session) enacted Public Law 2011, chapter 211, amending the program with varying effective dates. The modifications included changes to the basis of collection of the premiums effective July 1, 2011 and to the annual application of receipts of such premiums, to the extent in excess of the annual amounts necessary to fund debt service on the 2009 Bonds.

Specifically, as of July 1, 2011, the premium is calculated as follows:

- A. Diesel engine crankcase oil is subject to a premium of 35 cents per gallon;
- B. Gasoline engine crankcase oil sold or distributed in a container with a volume of 5 gallons or less is subject to a premium of 35 cents per gallon;
- C. Gasoline engine crankcase oil sold or distributed in a container with a volume of more than 5 gallons is subject to a premium of \$1.10 per gallon; and
- D. All other motor vehicle oil other than diesel engine crankcase oil and gasoline engine crankcase oil that is sold or distributed in a container with a volume of 16 gallons or less is subject to a premium of 35 cents a gallon.

In addition, the definitions of bulk motor vehicle oil and prepackaged motor vehicle oil were repealed and the definition of diesel engine bulk motor vehicle oil was amended to define diesel engine crankcase oil and the definition of gasoline engine bulk motor vehicle oil was amended to define gasoline engine crankcase oil. The definition of motor vehicle oil was modified to slightly expand the types of lubricants subject to the definition. Persons who were previously required to register with MRS and file sales and use tax returns in order to report collection of premiums are still required to do so.

Most significantly, Public Law 2011, chapter 211 prohibits any subsequent issuance of revenue obligation securities to fund response costs of eligible parties. Rather, if all amounts required by the trust documents securing the revenue obligation securities to be transferred to the trustee or to a paying agent have been transferred during a given year, and all costs incurred or projected by FAME to be incurred in administering the Fund have been funded through the transfer of such funds to FAME in that year, and if the balance of the Fund balance does not result in an amount less than \$600,000, FAME is directed to make certain payments from the Fund. Such payments from the amounts deemed "excess revenues" include (a) transfer to MRS of funds to be made available as reimbursement to certain motor vehicle oil dealers who paid premiums on

⁸ Maine Department of Environmental Protection Legislative Report, "Recommendations Concerning the Waste Motor Oil Disposal Site Remediation Program" (DEP, 17 SHS, Augusta, ME 04333). http://www.maine.gov/dep/spills/publications/legislativereports/documents/wastemotoroilgrpt12-1-2010_final_wcover.pdf December 1, 2010

motor vehicle oil that was subsequently sold or distributed outside of the State of Maine; (b) amounts due to certain responsible parties, including but not limited to the DEP (through its Uncontrolled Sites Fund), until such amounts are paid in full; and (c) a payment to the Maine National Guard. In 2012, FAME transferred excess revenues of (a) \$95,740.10 to MRS for the “reimbursement program” described above; (b) \$844,068.45 to the Plymouth Waste Oil Clean-up Fund for distribution to the Plymouth PRPs along with other monies remaining in that fund; (c) \$2,020,617.26 to the DEP’s Uncontrolled Sites Fund; and (d) \$41,778.49 to the Maine National Guard. In 2013, FAME transferred “excess revenues” of \$1,482,481.55 to the DEP’s Uncontrolled Sites Fund. In addition, Public Law 2011, chapter 211 directed FAME to forgive the loan balances of all borrowers under the Plymouth Waste-Oil Loan Program. FAME closed the books on all such Plymouth loans in June, 2011, resulting in the elimination of loan balances of \$3,273,562.02.

Subsequent to the enactment of Public Law 2011, chapter 211, the program was modified again by Public Law 2011, chapter 548 to make clarifications to the “reimbursement program”.

4. Activities and Eligible Expenses at the Waste Motor Oil Disposal Sites (DEP)

The following is the clean-up status of the four sites subject to the Waste Motor Oil Disposal Site Remediation Program.

Plymouth (aka Hows Corner Superfund Site). The Plymouth site is located off Route 7 in Plymouth. In the 1990s, DEP and EPA removed highly contaminated soil and installed a public water system in the area. FAME’s 2009 Bonds facilitated a final liability and remedial action settlement between EPA, 432 PRPs and DEP in 2010. In accordance with that agreement, in 2010 the PRPs undertook a Natural Resource Damage Compensation (NRDC) Plan that preserved over 700 acres in the area for traditional uses. In 2011 the PRPs installed a pump and treat system to control the spread of groundwater contamination, investigated vapor impacts to area residences, and installed a vapor mitigation system in one home. Since that time the PRPs have installed a second VI mitigation system into a home, and operated the Groundwater Hydraulic containment system.

Ellsworth (aka Robbins Property). At the Ellsworth site, located off Route 1A, contaminated groundwater had spread to nearby homes and a vocational school some 2,200 feet away. In 2002 DEP removed the highly contaminated soil from this site, which was a continuing source of pollutants to groundwater, and has been monitoring groundwater at and around the site. DEP also supplied and maintained filters at residences with impacted wells until public water was extended to the area in the fall of 2010. In 2013 DEP completed installation of a passive treatment system for groundwater that daylights from the abandoned well at the vocational school. In 2013 DEP also released some 223 PRPs from clean-up liability at the site, in accordance with a May, 2011 legislative change to the Waste Motor Oil Disposal Site Remediation Program law. DEP is planning on initiating a NRDC plan in 2014.

Casco. The Casco site is located on Tenney Hill Road off Route 11. In 2002 and 2003, DEP removed the highly contaminated soil that continued to leach pollutants to the groundwater. DEP has monitored area groundwater since that time. In 2013 DEP released some 194 PRPs from

clean-up liability at the site, in accordance with the Waste Motor Oil Disposal Site Remediation Program law. In 2014 DEP is planning to implement deed restrictions to prevent exposure to contaminated groundwater and a NRDC plan.

Presque Isle. After conducting an initial investigation, DEP has determined that the site does not pose an imminent and substantial danger to people currently drinking the area groundwater. Contaminants at the site are primarily petroleum products, which degrade much faster than the chlorinated solvents found at the other PBWO sites. This site was transferred to DEP's long-term petroleum clean-up program. DEP never systematically reviewed waste oil delivery records for the site, so a list of PRPs at this site was never compiled. Nonetheless, in 2013 DEP released PRPs from clean-up liability at the site, in accordance with the Waste Motor Oil Disposal Site Remediation Program law.

5. Waste Motor Oil Revenue Fund (FAME and MRS)

The amounts below represent the amounts generated by those responsible for payment of the waste motor oil premium in the given month. Revenues generated in a given month are due to MRS by the 15th day of the following month and are deposited into the Fund in the next following month. (For example, January revenues are due to MRS in February and deposited into the Fund in March. They are reflected as January revenues, the month they were generated.)

Revenues collected per month by MRS and deposited to the Fund to date (unaudited):

2013

November	\$200,190.58
October	\$217,254.44
September	\$218,199.66
August	\$213,753.52
July	\$201,074.86
June	\$206,025.64
May	\$236,073.00
April	\$225,412.93
March	\$212,736.67
February	\$235,833.90
January	\$228,189.58

2012

December	\$234,743.63
November	\$220,418.93
October	\$256,509.13
September	\$240,820.55
August	\$326,934.68
July	\$244,722.71
June	\$278,008.17
May	\$265,758.75
April	\$213,405.81

March	\$215,049.96
February	\$225,024.28
January	\$208,516.43

2011

December	\$274,164.50
November	\$231,416.50
October	\$223,975.78
September	\$282,951.61
August	\$228,759.78
July	\$232,477.67
June	\$294,709.97
May	\$213,576.37
April	\$243,775.21
March	\$297,192.72
February	\$239,812.29
January	\$220,257.61

2010

December	\$280,918.15
November	\$233,829.13
October	\$321,765.42
September	\$262,251.80
August	\$265,861.52
July	\$290,980.33
June	\$311,352.54
May	\$256,238.00
April	\$315,739.53
March	\$214,874.76
February	\$184,587.19
January	\$179,070.79

2009

December	\$241,847.67
November	\$289,788.44
October	\$203,522.57
September	\$182,730.18
August	\$138,228.30
July	\$161,025.61
June	\$154,497.33
May	\$106,701.51
April	\$128,739.27*
March	\$129,001.43
February	\$133,717.18

January \$234,795.36

* The amount transferred to the Fund (in June 2009) included an additional \$739 attributable to the pre-existing premium.

2008

December \$141,566.10

November \$145,003.60

October \$193,449.11

September \$221,711.09

August \$121,125.51

July \$135,536.00

June \$117,352.00

May \$117,586.00

April \$ 92,311.00

March \$138,329.00

February \$103,213.00

January \$116,710.00

2007

December \$127,887.00

November \$117,835.00

October \$120,700.00*

* This reflects the amount collected, although the amount transferred to the Fund was decreased by \$11,000 (to \$109,700) as a result of a one-time payment to MRS for its administrative costs, as authorized by the enabling legislation.

6. Conclusions

The Waste Motor Oil Disposal Site Remediation Program has generated sufficient revenues to enable payment of debt service and other expenses related to the 2009 Bonds including FAME's costs of administration of the program. Since the enactment of Public Law 2011, chapter 211 there have also been sufficient excess revenues to fund the obligations set forth in 10 MRSA §1020(3-A), although those obligations are not yet fully met.

For Further Information

Elizabeth L. Bordowitz
Chief Executive Officer
Finance Authority of Maine
PO Box 949
5 Community Drive
Augusta, ME 04332-0949
207-623-3263 ext. 3502
ebordowitz@famemaine.com

Katryn Gabrielson
Deputy General Counsel
Finance Authority of Maine
PO Box 949
5 Community Drive
Augusta, ME 04332-0949
207-623-3263 ext. 3515
kgabrielson@famemaine.com

David W. Wright, Director
Division of Remediation, BRWM
Maine Department of Environmental Protection
17 SHS, Augusta, ME 04333-0017
207-446-4366
david.w.wright@maine.gov

Peter B. Beaulieu, Director
Sales, Fuel and Special Tax Division
Maine Revenue Services
24 SHS, Augusta, ME 04333-0024
207-624-9732
peter.b.beaulieu@maine.gov