

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

**February 15, 2012**

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 also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report must also include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change.**

38 M.R.S.A. § 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, 2011 and ending December 31, 2011, 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. The terms of the current six appointed board members have all expired, but these members remain on the board until reappointed or a successor has been appointed. New appointments under the new law have not been made as of this time.

The Fund Insurance Review Board fulfilled its duties in 2011 through participation of the following eight members:

Michael Bonzagni, Chair

Richard Knowlton \*

Jamie Py

Robert Bender, Sr. \*

Brenda Beaulieu

Ron Dyer, DEP

Dirk Brunner \*

Richard McCarthy, SFMO

*\*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 five times in 2011. The Board has met twice since the effective date of the law on September 28, 2011.

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, 2011, the Fund Insurance Review Board processed a total of six appeals, four of which were heard by the Appeals Panel. In three of those cases, the agency decisions were upheld in part and overturned in part and in one case, the agency decision was upheld. One appeal was withdrawn by the appellant, 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 2011 appeals by case.

### **D. Regulatory Activity**

No rulemaking activities occurred in 2011.

**EXHIBIT A**

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

**FUND INSURANCE REVIEW BOARD - 2011 APPEALS ANALYSIS**

	<b>APPELLANT</b>	<b>DATE APPEAL FILED</b>	<b>DATE CHAPTER 3 SENT TO APPELLANT</b>	<b>DEP/SFMO POSITION STATEMENT DATE</b>	<b>DATE HEARING SCHEDULED</b>	<b>CONTINUANCE DATE</b>	<b>REASONS FOR CONTINUANCE</b>	<b>DATE APPEAL HEARD</b>	<b>OUTCOME</b>
1	Wayne Seekins	12/09/10	12/17/10	03/25/11	01/18/11	04/04/11	unable to attend	04/04/11	upheld in part / overturned in part
2	Butler, Maxcy & Heath, Inc	02/01/11	02/02/11	n/a	04/04/11			X	Withdrawn by Appellant
3	Katherine A. Verderosa	06/08/11	06/28/11	08/11/11	10/07/11	12/06/11	<i>possible withdrawal</i>		
4	Sheila Lucier	06/13/11	06/28/11	09/08/11	10/07/11	12/06/11	unable to attend	12/06/11	upheld
5	Steven Kelman	07/13/11	07/15/11	08/24/11	10/07/11			10/07/11	upheld in part / overturned in part
6	Helen Andrews	08/09/11	08/12/11	11/16/11	10/07/11	12/06/11		12/06/11	upheld in part / overturned in part

appeals heard	4
withdrawn	1
carried to 2012	1
appeals processed	6
DEP/SFMO upheld	1
DEP/SFMO overturned	
DEP/SFMO upheld/overturned in part	3
Dismissed/Remanded	

**EXHIBIT B:**

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

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

<b>Cash Balance 07/01/10</b>		<b>\$3,191,155.36</b>
<b>Principal Payments Received</b>	\$2,000.35	
<b>Interest on Investments</b>	\$16,175.09	
<b>Total cash increase</b>		<b>\$18,175.44</b>
<b>Reverse market value adjustments of Investments<sup>2</sup></b>	\$68,076.86	
<b>FAME Administrative Expense<sup>3</sup></b>	\$40,465.99	
<b>Funds transferred to Underground Oil Storage Replacement Fund 12/6/10</b>	\$199,661.52	
<b>Total cash decrease</b>		<b>-\$308,204.37</b>
<b>Cash Balance (6/30/11)</b>		<b>\$2,901,126.43</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 states, in part, that money in the Fund “may be used for direct loans or deferred loans for all or part of the costs of the Plymouth waste oil site remedial study, past cost settlement, implementation of institutional controls selected by the United States Environmental Protection Agency to prevent use of contaminated groundwater by nearby residents, oversight costs of the United States and the State, remedial action costs and time-critical removal action costs” when [FAME] determines that certain eligibility criteria have been met. These costs are referred to collectively as the “response costs.”

The Program has been instrumental in protecting the health, welfare and safety of the citizens of the state. More than forty small businesses, municipalities, and school districts have borrowed from the Plymouth Program to pay response costs associated with the Plymouth site. With each new assessment of costs, there has been new legislation amending the statute to allow additional disbursement for the stated purpose and to open the Plymouth Program for new applications, as well as amendments to Chapter 318 of the Rules of the Finance Authority of Maine. 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

<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 2011 begins July 1, 2010 and ends June 30, 2011.

<sup>2</sup> Funds administered by FAME share in a combination of earnings from monies invested short-term in the State Treasurer’s cash pool and long-term in fixed term investments. FAME’s policy is to hold the fixed term investments to maturity. Until maturity, the holdings are required to be marked to market for purposes of financial statement presentation. Since the fixed term investments are held to maturity, there will be no realized market value gain or loss. When a closing fund balance is ascertained, the fund receives the value of its investments and accrued interest.

<sup>3</sup> FAME is authorized pursuant to 10 M.R.S.A. § 1023-L(3-A) to charge the Fund for its costs of administration. Pursuant to Chapter 318 of the Rules of the Finance Authority of Maine, FAME may deduct from the Fund an annual 1% loan administration fee on the outstanding principal loan balances. This amount was \$30,930.49 in FY 2011. In addition, the amount of \$9,535.50 was charged to the Fund in FY 2011 for FAME’s costs of administration related to the statutory mandate to eliminate the loan balances and distribute the Fund.

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 are 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 existing or any new 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 to eligible parties for response costs. 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 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 was able to issue 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 should 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 is currently working to distribute the \$2,901,126.43 balance in the Fund.

For more information, please see, among other reports filed with the Legislature, the December 1, 2010 Report of the DEP and the January 17, 2012 Report of FAME, DEP and Maine Revenue Services.

**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

**February 15, 2012**

Contact: Patricia Aho, Commissioner  
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 that a 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.

#### B. Summary of Revenues and Expenditures

Table 1 illustrates financial activity in the Ground Water Oil Clean-up Fund for fiscal year (FY) 2011 (July 1, 2010 – June 30, 2011). A balance of \$7,261,299 was carried forward from FY 2010. The net balance for FY 2011 was \$21,619,237, including the carry forward balance. Expenditures totaled \$15,506,115, and the net fund availability at the end of the fiscal year was \$4,600,182.

In FY 2011, there was an increase of \$467,067 in income and an increase of \$3,410,654 in expenditures compared to FY 2010. The growth in expenditures is the result of the Department's efforts to clean up oil contaminated sites. The Department continues to implement measures to control costs. These efforts are discussed in greater detail in Section C of this report (Fund Adequacy) and include prioritized spending and heightened focus on the cost effectiveness of remedial measures. The main sources of income are fees on each barrel of oil transferred into Maine by ship, road or rail.<sup>1</sup> The base fees are 38¢ per barrel of gasoline, 19¢ per barrel of most other refined petroleum products and 4¢ per barrel of #6 oil. Additionally, the Fund Insurance Review Board (FIRB) has adopted a rule<sup>2</sup> imposing a surcharge when the balance in the Fund remains below \$5 million dollars for three consecutive months. The surcharge of 20¢ per barrel of gasoline and 10¢ per barrel of other petroleum products has been in effect since January 1, 2006.

The Fund Insurance Review Board met quarterly during FY 2011 to review the revenue and expenditures from the Fund, discuss issues related to the administration of the Fund and hear any appeals filed for claims related decisions of the Office of State Fire Marshal and Department of Environmental Protection. Pursuant to a change in Maine statute, the FIRB will begin meeting 6 times per year in 2012 unless the Board votes not to hold a meeting.

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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  
STATEMENT OF CASH POSITION  
GROUNDWATER OIL CLEAN-UP FUND  
AT JUNE 30, 2011

BALANCE FORWARD (July 1, 2010)	\$ 7,261,299
INCOME	\$16,598,907
Minus Fee Refunds	- \$ 2,240,969
NET INCOME	\$14,357,938
NET BALANCE	\$21,619,237
EXPENDITURES	
Personal Services	\$ 4,440,719
All Other	\$ 6,394,348
Capital	\$ 0
Indirect Cost Transfers	\$ 1,692,735
Other Transfers (Excluding FAME)	\$ 2,978,313
NET EXPENDITURES	\$15,506,115
CASH BALANCE (June 30, 2011)	\$ 6,113,119
INDIRECT COST OBLIGATION (June 30, 2011) (untaken)	\$ 123,171
ENCUMBRANCES	\$ 1,389,766
NET FUND AVAILABILITY (June 30, 2011)	\$ 4,600,182*

\*Does not consider outstanding liabilities required to characterize sites that have not been investigated, complete ongoing remedial work, or pay user fee obligations.

NOTES:

- "INCOME" INCLUDES FEES, INTEREST, REIMBURSEMENTS, FINES AND MISCELLANEOUS INCOME.
- "OTHER TRANSFERS" INCLUDES TRANSFERS TO OTHER STATE AGENCIES, AND INTERNAL TRANSFERS TO OTHER ACCOUNTS.
- "EXPENDITURES" INCLUDE ADJUSTMENTS TO BALANCE FORWARD INCOME (CREDIT TO EXPENSES).
- THE COLLECTION OF FEES IS SUSPENDED WHEN THE FUND BALANCE REACHES \$12,500,000.

The net fund income includes all revenue received during FY 2011 minus fee refunds in the amount of \$2,240,969. 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 2011 decreased by \$204,891 compared to FY 2010. The amount refunded in past years is listed below.

FY 2011	\$2,240,969
FY 2010	\$2,445,860
FY 2009	\$2,723,584
FY 2008	\$2,353,925
FY 2007	\$2,565,214

### C. Fund Adequacy

The net fund availability (cash balance minus encumbrances) in the Fund was \$4,600,182 at the end of FY 2011 (June 30, 2011). This represents a decrease of \$2,661,117 since the beginning of the fiscal year. During FY 2008, the balance in the Fund had plummeted to approximately \$1.7 million. The improved stability of the fund is attributed to the additional oversight and cost effectiveness measures implemented by the Department, the deferment of several clean up projects and the decline in redevelopment activity. Cleanup has since been completed on nearly all those sites deferred in FY 2008. Funding for cleanup is prioritized to insure that sites posing the greatest risk are cleaned up. It is noteworthy that historically a small percentage of sites in locations particularly sensitive to public health account for a disproportionate percentage of annual remediation expenditures. For example, from 1996 to 2008, 46% of clean-up expenditures were needed at 2% of the commercial AST sites that were approved for coverage. Similarly, 2% of discharges from eligible UST sites were responsible for 27% of the expenditures.

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

- 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.

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

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. As part of the continuing effort to improve the petroleum remediation program, the Department is undertaking further updates to soil, ground water and drinking water remediation guidelines in 2012. These changes will be based on updates in underlying toxicological data, resulting in more cost effective decision-making.

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

It must be noted that from FY 2007 through FY 2010, there was a moderate but steady decline in revenue to the Ground Water Oil Clean-up Fund. However, there was a modest increase in net income in FY 2011 when compared to FY 2010. Table 3 provides the net income for each of the past 5 years.

Net Income – Ground Water Oil Clean-up Fund	
FY 2011	\$14,357,938
FY 2010	\$13,685,980
FY 2009	\$16,043,260
FY 2008	\$16,829,032
FY 2007	\$17,013,819

It is unclear whether the current oil import fees that are the main source of revenue in the Ground Water Oil Clean-up Fund, together with our ongoing efforts to closely monitor Fund expenditures will be adequate to maintain Fund solvency and support the Department’s ongoing efforts to address the backlog of sites awaiting clean-up. We can say however that:

- The majority of new petroleum releases consist of kerosene and heating oil that occur at above ground storage tank sites; and
- Financial liability for those sites on the priority list plus newly discovered releases greatly exceeds the current balance in the Ground Water Oil Clean-up Fund.
- The program management measures implemented since 2009 have succeeded in stabilizing the Fund balance;
- All approved claims for reimbursement, payments to contractors and third party claims have been paid;
- Established priorities for site clean-ups allows those sites posing the greatest risks to be cleaned up in a timely manner;
- 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;
- State statute prohibits oil discharges and requires 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;

- State statute encourages 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 Fund provides for the prompt and effective cleanup of petroleum releases and compensation of third party damages. Prompt response is the key to minimization of damages and the associated costs;
- Annual inspections by certified professionals combined with focused inspections by Department staff have resulted in increased compliance and a decrease in applications for the coverage of eligible clean-up costs and third party damages;

#### 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 subject to the payment of a standard deductible based on the number of locations with underground tanks and 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, 2010 through June 30, 2011, the Department received 6 applications for the coverage of clean-up costs. By comparison, in FY 10, the Department received 8 applications.

During FY 2011, 207 orders finding applicants eligible 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 an increase of 5 eligible applicants compared to FY 2010. Table 4 summarizes application activity from aboveground and underground oil storage facilities in FY 2011.

TABLE 4	
Applications for coverage of clean-up costs in FY 2011	
Total Received FY 11	217
Eligible	213
Ineligible	4

<sup>4</sup> See 38 M.R.S.A. § 568-A.

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

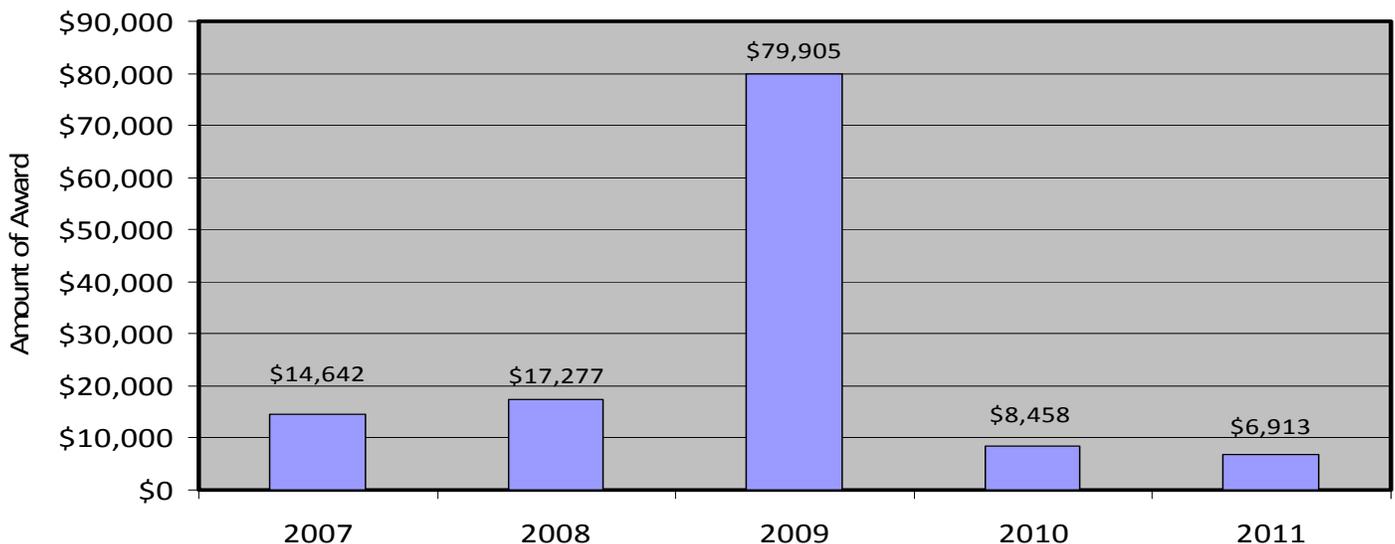
Table 5 totals the application activity from both underground oil and aboveground oil storage facilities from the inception of the program through the end of FY 2011.

TABLE 5	
Total Applications (July 1, 1990 – June 30, 2011)	
Total Received	3,844
Total Eligible	3,674
Total Ineligible	170

#### 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 2011, the Department completed processing one (1) third party claim with no cash award and a second third party claimant received a partial settlement of \$6,913, with the claim remaining open for a possible additional damage award. The average cash award to third party claimants in FY 2010 was \$8,458. Figure 1 illustrates the average cash award to third party claimants from 2007 through 2011. 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.

**Figure 1. Average Third Party Damage Claim Award**



## F. Compliance with Tank Abandonment Schedule

Currently, there are about 4,109 conforming underground oil storage tanks registered and in operation in Maine. As of December 2011, about 35,687 non-conforming underground tanks have been properly removed or abandoned in place since removal deadlines were enacted over twenty years ago. This includes 57 non-conforming tanks that were removed in 2011. 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 the meantime, these tanks are prohibited from receiving deliveries of product.<sup>6</sup>

In addition to the non-conforming tanks, approximately 3,759 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 20 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 Fund coverage and the cost of cleaning up oil contamination. Thus, the Fund is used to help new owners clean up the site for redevelopment.

In FY 2011, there was a decrease in the number of applications to the Voluntary Response Action Program and less demand on the Ground Water Oil Clean-up Fund from 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>7</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. The Fund balance has not been sufficient to clean up all sites. Once 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.

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<sup>6</sup> See 38 M.R.S.A. § 563-A(1-D).

<sup>7</sup> See 38 M.R.S.A. § 561.

As illustrated in Table 6, the list of sites requiring long term remedial work has fluctuated in the past five years. The number of sites is currently at 511 (January, 2012). This list includes all sites where the remedial effort is not complete.

January 2012	511
January 2011	495
January 2010	441
January 2009	494
January 2008	442

Figure 2 represents 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 2007 through December 2011. 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.

**Figure 2. Long-Term Petroleum Remediation Sites  
Closed Since December 2007**

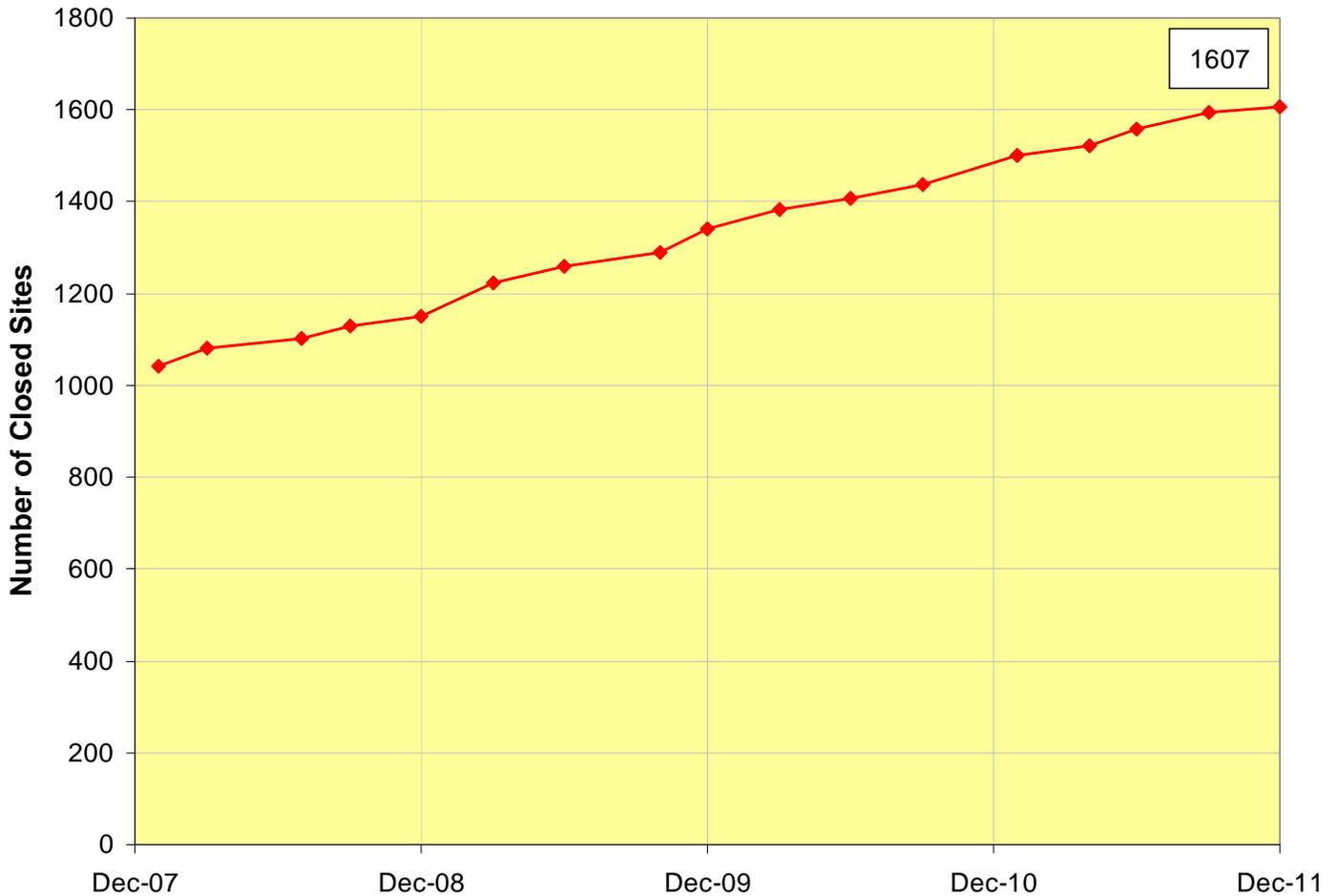


Figure 3 illustrates the number of active, long-term remediation sites from December 2007 through December 2011. As this number fluctuates, managing expenditures through the prioritization of sites and cleaning sites to levels commensurate with the degree of risk posed will remain an important function for the Department. Revenue and expenditures will have to be carefully monitored to ensure they remain in alignment.

**Figure 3. Active Sites In Long-Term Remediation**

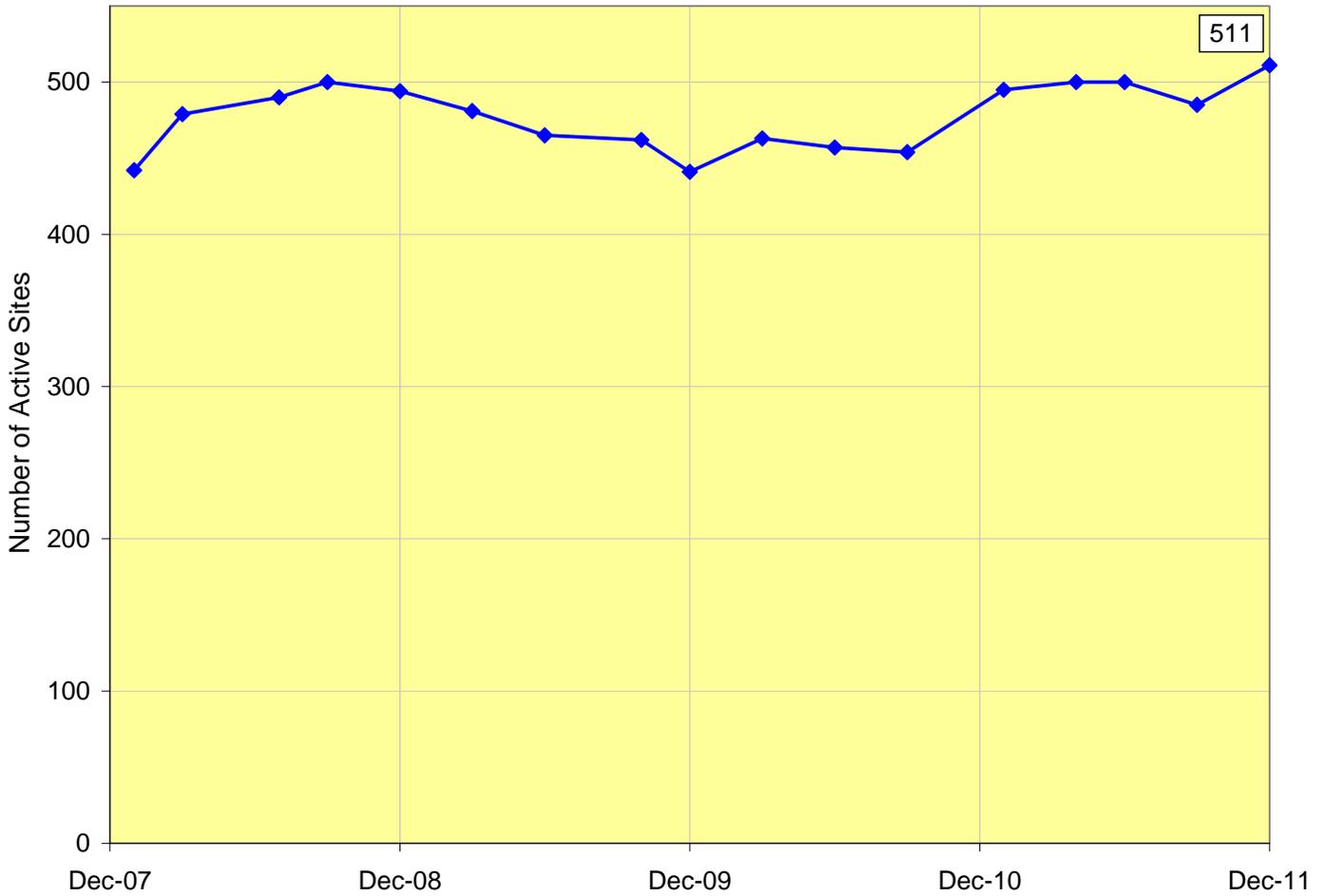


Figure 4 illustrates the makeup of sites referred annually for long-term clean-up activities based on the predominant petroleum product released. Data from 2007 through calendar year 2011 is provided. Sites contaminated by fuel oil and kerosene account for 96 of the 127 sites (75.6%) in 2011.

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

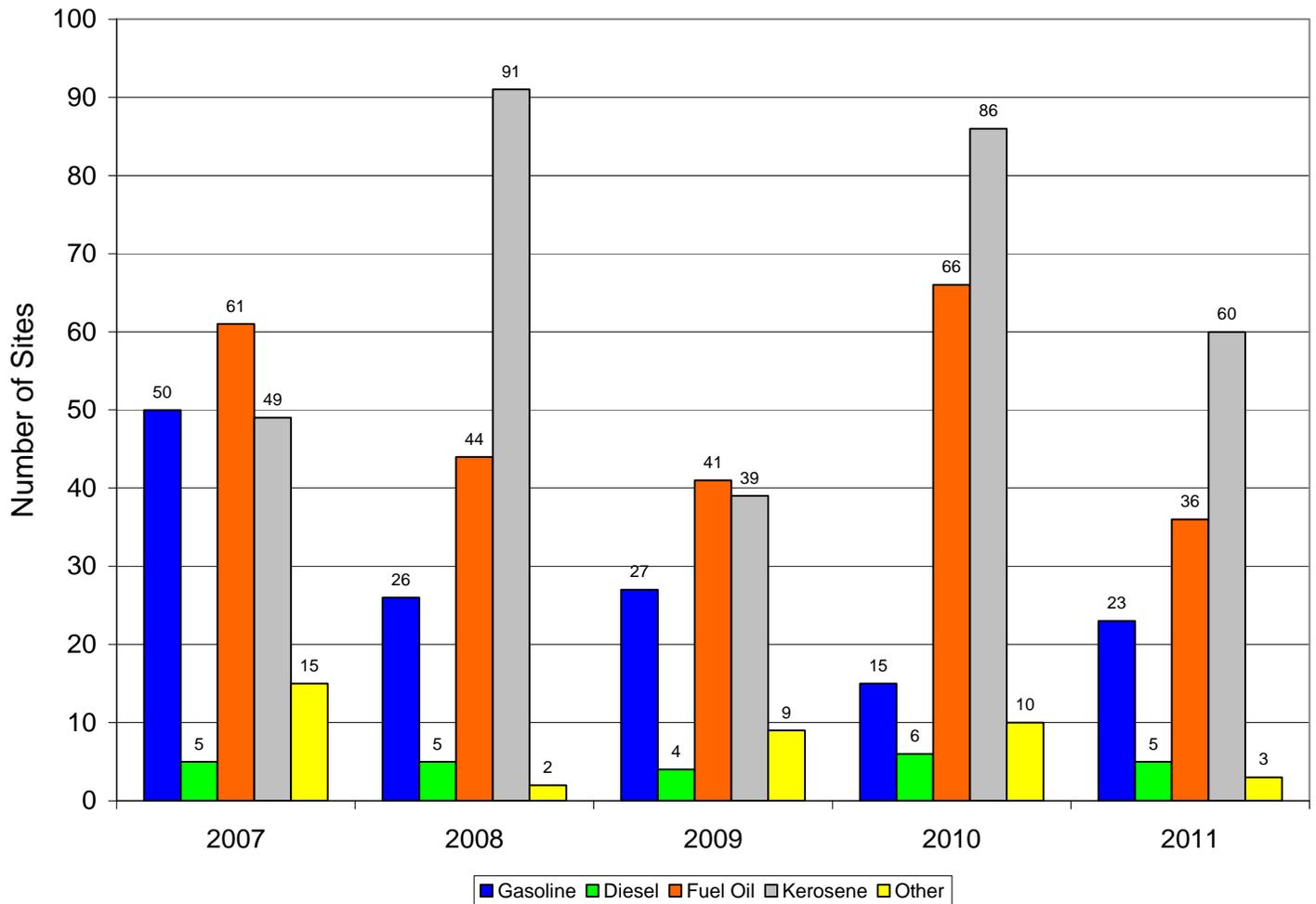
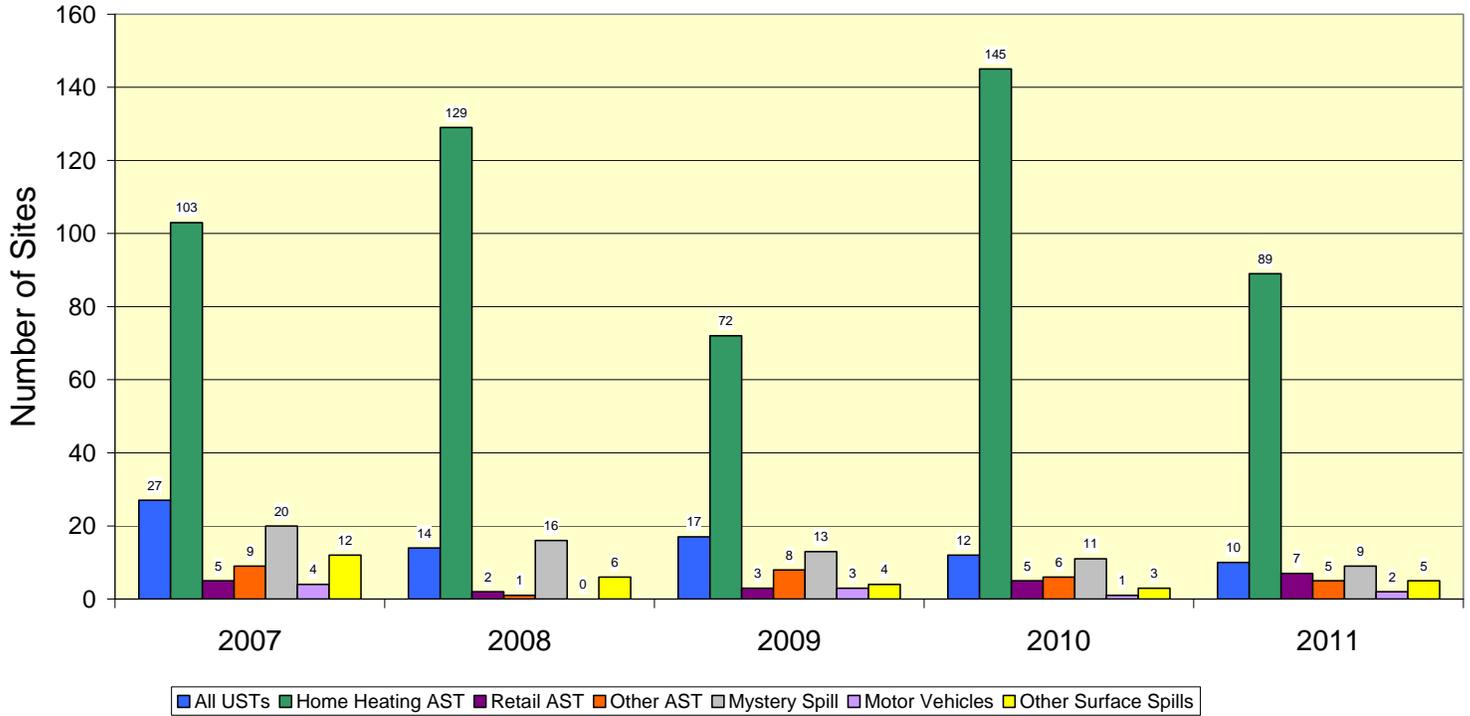


Figure 5 illustrates the make-up of sites subject to long-term clean-up activities based on the source or type of storage tank facility for the past five years. This analysis demonstrates that aboveground oil storage facilities account for 101 sites out of a total of 127 sites (79.5%) in calendar year 2011.

**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 October 2011, Notices of Violation (NOVs) were issued to 250 non-compliant tank owners. By December, 2011 90% 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 2011, 83 installers and 58 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 2011 (July 1, 2010 - June 30, 2011) Department staff completed 345 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 2011, there are 565 AST facilities registered in the database. There are approximately 109 tanks or chambers registered as containing diesel.

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. Of the 153 registered motor fuel facilities with underground piping, 40 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 and have since upgraded their underground piping to current standards, discontinued use of the piping or are the subject of ongoing enforcement.

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. 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 view all the training modules and become certified to 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. Approximately 530 individuals have become certified and over 150 of those may operate multiple facilities. A proposed rule, *Chapter 693, Operator Training for Underground Oil and Hazardous Substance Storage Facilities*, was the subject of an extended public comment period that concluded on May 11, 2011. A newly revised rule consistent with recent legislation will be proposed in early 2012.

## 6. Home Heating Oil Tank Replacement Program

With the Ground Water Oil Clean-up Fund remaining reasonably stable, \$500,000 is budgeted for distribution to Maine's Community Action Programs (CAPs) beginning in calendar year 2012. This is the same amount spent in the prior contract period (February 2011-March 2012). The money will be distributed to the CAPs and used to replace home heating oil tanks (typically 275 gallon tanks or 55 gallon drums) determined to be at a high risk of tipping over or leaking and creating the need for a costly clean-up. There are eight CAP agencies in Maine and the amount of the contracts will run from \$19,450 to \$102,900. The amount of money is 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.

The Department has also budgeted \$90,000 for use in 2012 to replace tanks considered at risk of leaking. This is the same amount expended in 2011 for this purpose. Additional allocations are necessary to replace at risk tanks located within the wellhead protection area in South Berwick and for a new community water system in New Gloucester. These expenditures are estimated to be \$175,000. This is approximately the same amount as expended in 2011 to protect wellhead protection zones in Patten, Scarborough and Bethel. Eligibility 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.