

Report to the Joint Standing Committee on Environment
and Natural Resources
131st Legislature, First Regular Session

Biennial Report of the Clean-up and Response Fund Review Board

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Executive Summary

This biennial report provides information on the experience administering the Maine Ground and Surface Waters Clean-up and Response Fund in state fiscal years (FY) 2021 and 2022.

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

This report satisfies the reporting requirement of [38 M.R.S. § 568-B\(2-D\)](#). The law requires that:

Beginning on April 15, 2015 and every other year thereafter, the Clean-up and Response Fund Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature having jurisdiction over natural resource matters on the department's and the review board's experience administering the 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. To carry out its responsibility under this subsection, the review board may order an independent audit of disbursements from the fund.

This report represents both the Department's and the Review Board's experience administering the Fund during state FY 2021 (July 1, 2020 – June 30, 2021) and state FY 2022 (July 1, 2021 – June 30, 2022). The report is divided into two sections. Part I covers the Department's administration of the Fund including an assessment of the adequacy of the Fund, and Part II addresses the activities of the Review Board.

PART I

Administration of the Maine Ground and Surface Waters Clean-up and Response Fund Maine Department of Environmental Protection

A. Introduction

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

B. Summary of Revenues and Expenditures

In FY 2021 and FY 2022, the main sources of revenue into the Fund were the fees on each barrel of oil transferred into Maine by ship, road or rail.¹ Currently the base fees are 41¢ per barrel of gasoline, 22¢ per barrel of most other refined petroleum products (#2 fuel oil, kerosene, jet fuel, diesel fuel and other refined products), 7¢ per barrel of #6 fuel oil and 3¢ per barrel of unrefined crude oil and liquid asphalt. Additionally, [Oil Import Fees, 90-564 C.M.R., ch. 4](#) (last amended May 20, 2017) of the rules of the Review Board establishes a surcharge of up to 18¢ per barrel of gasoline and up to 6¢ per barrel of other refined petroleum products except unrefined crude oil, liquid asphalt and #6 oil when the balance in the Fund falls below \$6 million dollars. The surcharge has been in effect since February 1, 2014 when the fund balance dropped below \$5 million, which was the trigger at the time. The surcharge was in effect throughout state FY 2021 and FY 2022 (July 1, 2019 - June 30, 2021).

Table 1 illustrates financial activity in the Maine Ground and Surface Waters Oil Clean-up and Response Fund for FY 2021 (July 1, 2020 – June 30, 2021). A balance of \$8,890,030 was carried forward from FY 2020. The net balance for FY 2020 was \$21,928,839 including the carry forward balance. Expenditures totaled \$15,291,777, and the net fund availability at the end of the FY 2020 was \$4,920,506.

Table 2 illustrates financial activity in the Maine Ground and Surface Waters Clean-up and Response Fund for FY 2022 (July 1, 2021 – June 30, 2022). A balance of \$6,637,062 was carried forward from FY 2021. The net balance for FY 2022 was \$20,565,790 including the carry forward balance. Expenditures totaled \$15,218,634 and the net fund availability at the end of the fiscal year was \$2,866,310.

¹ See [38 M.R.S. § 551\(4\)](#)

In FY 2022, there was an increase of \$889,920 in net income and a decrease of \$73,143 in expenditures compared to FY 2021.

The Department continues to implement cost control measures including prioritized spending and heightened focus on the cost effectiveness of remedial measures.

Table 1 provides a summary of the income, expenditures and fund balance for FY 2021.

TABLE 1
STATEMENT OF CASH POSITION
MAINE GROUND AND SURFACE WATERS CLEAN-UP AND RESPONSE FUND
ON JUNE 30, 2021

BALANCE FORWARD (July 1, 2020)		\$8,890,030
INCOME	\$14,909,83	
Less Fee Refunds	<u>- \$1,871,005</u>	
NET INCOME		\$13,038,808
NET BALANCE		\$21,928,839
EXPENSES		
Personal Services	\$6,479,812	
All Other	\$5,805,767	
Capital	\$0	
Indirect Cost Transfers	\$2,823,992	
Other Transfers	<u>\$182,206</u>	
NET EXPENSES		\$15,291,777
CASH BALANCE (June 30, 2021)		\$6,637,062
INDIRECT COST OBLIGATION (June 30, 2021) (untaken)		\$307,672
ENCUMBERANCES AND OBLIGATIONS (untaken)		\$1,408,885
NET FUND AVAILABILITY (June 30, 2021)		\$4,920,506*

*Does not consider outstanding liabilities required to characterize sites that have not been investigated, completed ongoing remedial work, or paid 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 \$18,500,000.
- NET FUND AVAILABILITY INCLUDES ENBUMBRANCES AND INDIRECT COST OBLIGATIONS (UNTAKEN).

Table 2 provides a summary of the income, expenditures and fund balance for FY 2022.

**STATEMENT OF CASH POSITION
MAINE GROUND AND SURFACE WATERS CLEAN-UP AND RESPONSE FUND
ON JUNE 30, 2022**

BALANCE FORWARD (July 1, 2021)		\$6,637,062
INCOME	\$15,818,256	
Less Fee Refunds	<u>- \$1,889,527</u>	
NET INCOME		\$13,928,728
NET BALANCE		\$20,565,790
EXPENSES		
Personal Services	\$6,142,648	
All Other	\$6,505,835	
Capital	\$133,588	
Indirect Cost Transfers	\$2,067,436	
Other Transfers	<u>\$369,127</u>	
NET EXPENSES		\$15,218,634
CASH BALANCE (June 30, 2022)		\$5,347,155
INDIRECT COST OBLIGATION (June 30, 2022) (untaken)		\$964,704
ENCUMBERANCES AND OBLIGATIONS (untaken)		\$1,516,141
NET FUND AVAILABILITY (June 30, 2022)		\$2,866,310*

*Does not consider outstanding liabilities required to characterize sites that have not been investigated, completed ongoing remedial work, or paid 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 \$18,500,000.
- NET FUND AVAILABILITY INCLUDES ENBUMBRANCES AND INDIRECT COST OBLIGATIONS (UNTAKEN).

Table 3 provides the net income for each of the past 5 years.

TABLE 3
Net Income – Maine Ground and Surface Waters Clean-up and Response Fund

FY 2022	\$13,928,728
FY 2021	\$13,038,808
FY 2020	\$14,578,214
FY 2019	\$14,864,675
FY 2018	\$14,330,699

The net fund income includes all revenue received minus fee refunds made in the fiscal year. 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, 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 rail or highway. 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.² Refunds made during FY 2021 decreased by \$288,885 when compared to refunds in FY 2020. Refunds during FY 2022 increased by \$18,522 compared to FY 2021.

The amount refunded in each of the past 5 years is listed in Table 4 below:

TABLE 4
**Fee Refunds for Petroleum Exported Directly Out-of-State from Maine's
Licensed Oil Terminals**

FY 2022	\$1,889,527
FY 2021	\$1,871,005
FY 2020	\$2,159,890
FY 2019	\$1,851,859
FY 2018	\$2,111,006

² See [38 M.R.S. § 551\(4-B\)](#) and [06-096 C.M.R. ch. 685](#)

C. Fund Adequacy

The net fund availability (cash balance minus encumbrances) in the Fund was \$2,866,310 at the end of FY 2022 (June 30, 2022). This represents a decrease of \$2,054,196 in the available balance since the beginning of the fiscal year. All approved claims for reimbursement, payments to contractors and third-party claims have been paid. Funding for clean-up activities is prioritized to ensure that sites posing the greatest risk are given the highest priority for clean-up.

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

- Close technical oversight, including internal “peer review” of clean-up remedies and budgets for all state led clean-up projects;
- Use of analytical procedures 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 ensure sites are cleaned up 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 risk-based clean-up guidelines has dramatically improved the cost effectiveness for the clean-up of oil discharges from underground and aboveground oil storage (UST and AST) facilities. Most of these cost savings have been realized at sites requiring soil remediation.

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

Table 5 provides statistics for eligibility determinations of applications for coverage of eligible clean-up costs and third-party damages to the Fund. Under this program, owners and operators of underground oil storage tanks that have suffered a discharge may apply to the Fund for coverage of eligible clean-up costs and third-party damages up to \$1 million per occurrence, while owners and operators of aboveground oil storage facilities may apply to the Fund for coverage of eligible clean-up costs and third-party damages up to \$750,000 per occurrence.³ Eligible applicants are limited to less than \$2 million aggregate of eligible costs in a calendar year. Applications related to underground oil storage facilities (UST) are filed with the Department of Environmental Protection. Applications for eligibility determinations for aboveground oil storage facilities (AST) are filed with the Office of State Fire Marshal.

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

³ See [38 M.R.S. § 568-A](#)

appealed to the Review Board (see Part II of this report). All deductible amounts are established in statute.⁴

In FY 2021, the Department received 6 applications for the coverage of clean-up costs at UST facilities. By comparison, in FY 2020, the Department received no applications. All applicants were determined to be eligible for the coverage of eligible clean-up costs. In FY 2022, the Department received 6 applications for the coverage of clean-up costs at UST facilities. All applicants were determined to be eligible for the coverage of eligible clean-up costs.

In FY 2021, 187 orders finding applicants eligible for coverage of clean-up costs and third-party claims at AST facilities were forwarded to the Department from the Office of State Fire Marshal. No orders were received finding that applicants were not eligible for the coverage of eligible clean-up costs. This represents a decrease of 50 eligible applicants compared to FY 2020. In FY 2022, 233 orders finding applicants eligible for coverage of clean-up costs and third-party claims at AST facilities were forwarded to the Department from the Office of State Fire Marshal. One order was received finding the applicant not eligible for the coverage of eligible clean-up costs. This represents an increase of 46 approved applications when compared to FY 2021.

Table 5 summarizes application activity from aboveground and underground oil storage facilities in FY 2021 and FY 2022. The number of eligible applicants increased by 46 over the biennium.

Total Received FY 21	193	Total Received FY 22	240
Eligible	193	Eligible	239
Ineligible	0	Ineligible	1

E. Administration of Third-Party Claims

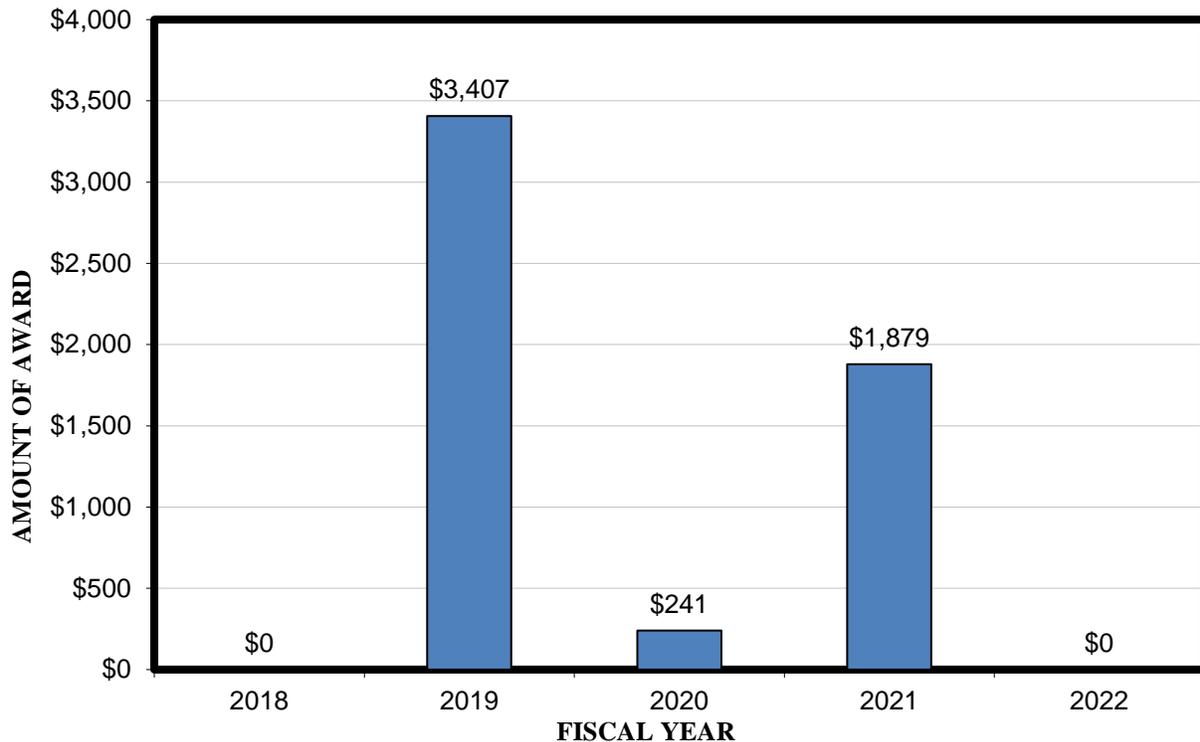
The Department is currently processing no open claims for third-party damages against the Maine Ground and Surface Waters Clean-up and Response Fund. During FY 2021 and FY 2022 the Department completed the processing of one third-party claim and awarded a total of \$1,879.44 to the third-party claimant. The average cash award to third-party claimants for claims that were fully resolved in FY 2021 was \$1,879.44. There were no cash awards to third-party claimants in FY 2022.

Figure 1 illustrates the average cash award to third-party claimants from FY 2018 through FY 2022. The average award is easily influenced by the number of claims processed in a particular year and is unpredictable. Settlement of a small number of claims that include property devaluation for a property or properties located where property values are high can result in a high average award. 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. The Department also manages and directly pays for the operation and maintenance

⁴ See [38 M.R.S. § 568-A\(2\)](#)

of Department installed water treatments systems greatly minimizing the damages incurred by third-parties.

FIGURE 1
Average Award



F. Compliance with Tank Abandonment Schedule

As of the end of FY 2022, there were 2,051 conforming underground oil storage tanks registered and in operation in Maine. Approximately 36,029 non-conforming underground tanks have been properly removed or abandoned in place since removal deadlines were enacted over 29 years ago. This includes 28 non-conforming tanks that were removed in FY 2021 and 35 non-conforming tanks removed in FY 2022. 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 5,691 conforming (corrosion resistant) underground oil storage tanks also have been removed or permitted to be abandoned in place through the end of FY 2022. Conforming underground tanks must be removed upon confirmation of a leak or 30 years from the date of installation. Owners of 38 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 subject to enforcement action by the Department.

G. Voluntary Response Action Program (VRAP)

The Maine Ground and Surface Waters Clean-up and Response Fund can be used to clean up oil contaminated commercial property that is being sold or has been sold for redevelopment. As businesses close and properties are sold for other uses, site assessments are typically required as a condition of the property transfer by the lending institution involved in the transaction. When oil discharges from eligible storage systems are identified, the buyer or seller may be eligible for coverage by the Fund for costs of cleaning up oil contamination. Thus, the Fund facilitates cleaning up the site for 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.”⁵ Sites where oil 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. Table 6 also provides the number of sites requiring long-term remedial actions that have been completed in each of the past 5 years. Starting with FY 2019, the Department transitioned to reporting site activities by fiscal year in order to be consistent with the financial reporting schedule contained in this report.

TABLE 6
Number of Sites Needing Long Term Remedial Work

	Completed	Remaining
FY2022	113	430
FY2021	112	457
FY2020	152	483
FY2019	137	535
CY2018	91	540

⁵ See [38 M.R.S. § 561](#)

Figure 2 illustrates the number of long-term petroleum remediation sites that have been cleaned to the Commissioner’s satisfaction using the Fund from 2018 through FY 2022. The figure includes only sites that were referred to the Department’s Division of Technical Services and Division of Petroleum Management. Petroleum spills that can be cleaned up immediately or only require short-term oversight by the Division of Response Services are not included in this figure. Typically, only sites with substantial contamination are referred to Technical Services and Petroleum Management for additional investigation and longer-term remedial efforts. For comparison, Division of Response Services staff responded to and resolved an additional 2,355 oil spill sites in FY 2021 and 1,944 oil spill sites in FY 2022 that did not need to be referred. Timely reporting and early response continue to be the key to minimization of damages and the associated costs.

Figure 2 also illustrates the number of new remediation sites added each year from 2018 through FY 2022. As this number fluctuates, managing expenditures through the prioritization of sites and cleaning up 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.

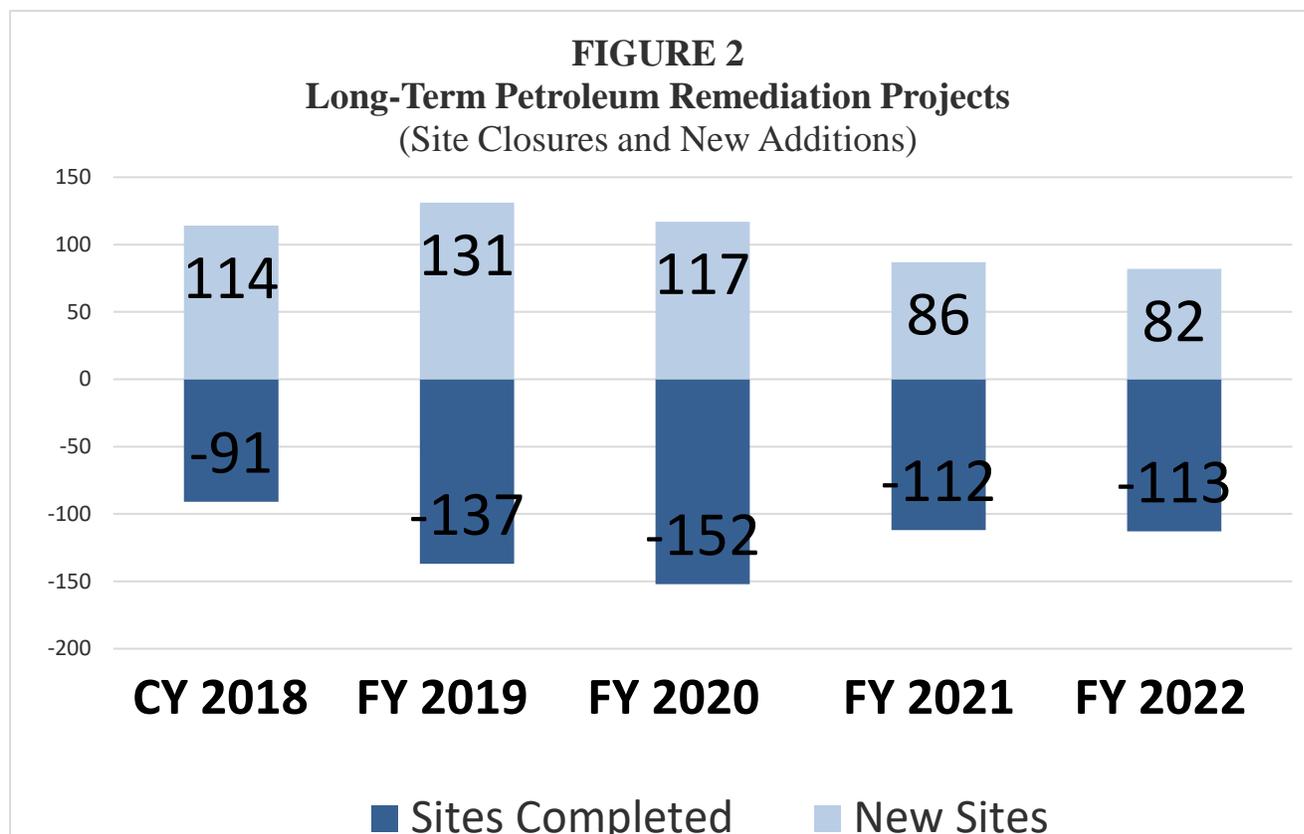


Figure 3 illustrates the makeup of sites referred annually for long-term clean-up activities based on the predominant petroleum product released. Data from 2018 through FY 2022 is provided. Sites contaminated by fuel oil and kerosene accounted for 80 of the 86 sites (93%) in FY 2021 and 69 of 82 sites (84%) in FY 2022.

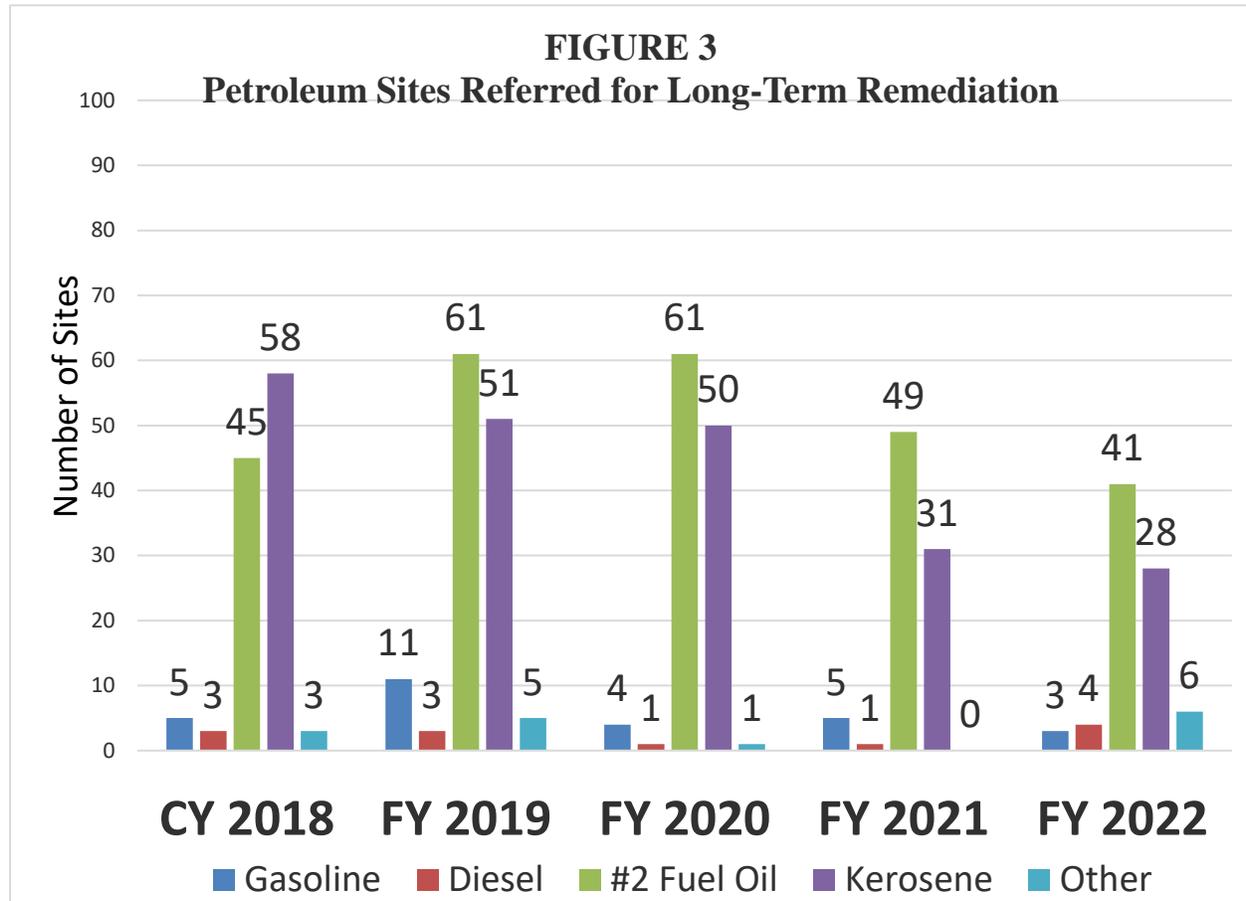
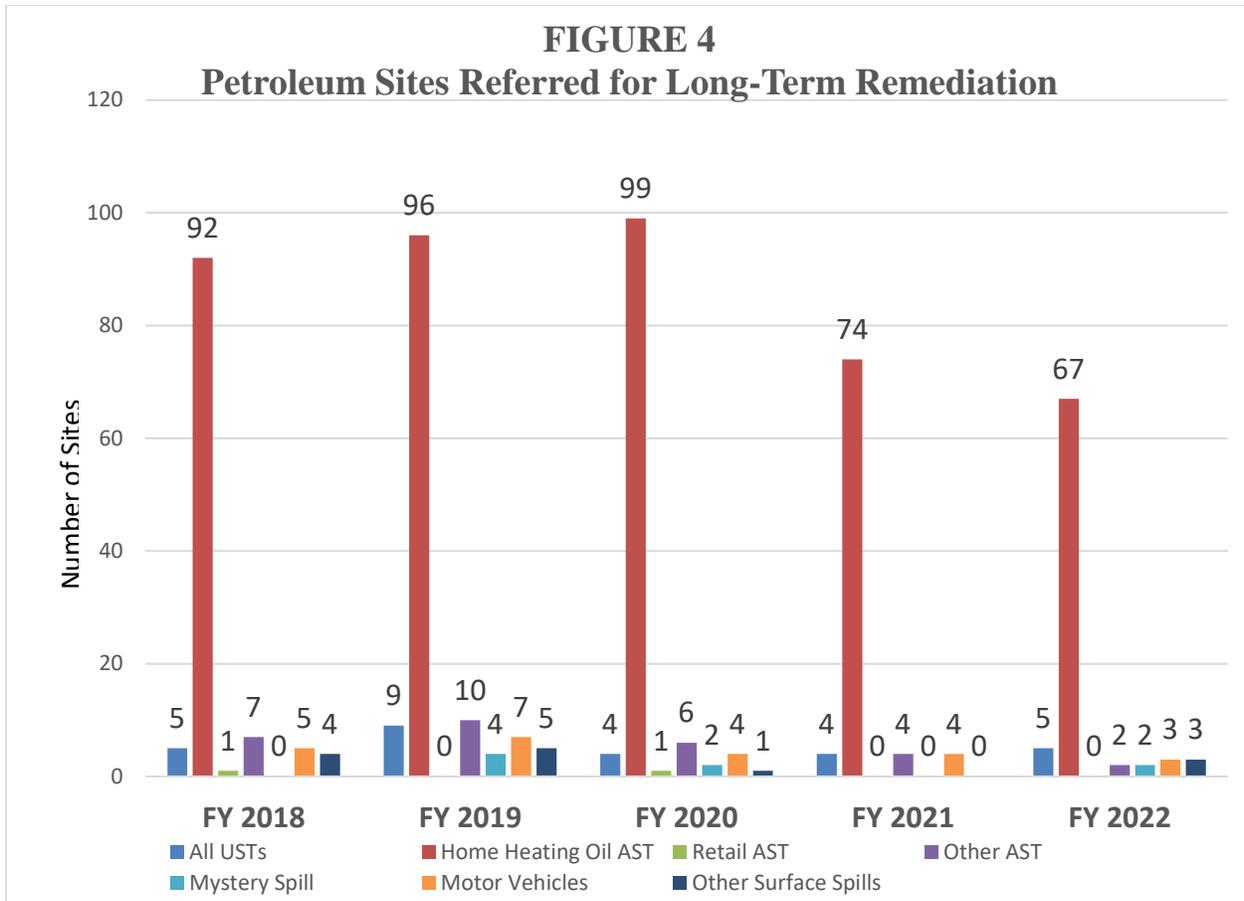


Figure 4 illustrates the make-up of sites subject to long-term clean-up activities based on the source or type of storage tank facility for the past five years. This analysis demonstrates that aboveground oil storage facilities account for 78 sites out of a total of 86 sites (91%) in FY 2021 and 69 out of 82 sites (84%) in FY 2022. The majority of new petroleum releases consist of kerosene and #2 heating oil that occur at aboveground storage tank sites.



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 reports must be filed with the Department for all underground oil storage tanks. In November 2021, Notices of Violations (NOV’s) were issued to 225 owners for not submitting a passing annual inspection report in the previous fiscal year (July 1, 2020 to June 30, 2021). This represented a compliance rate of approximately 84% as well as a decrease of 54 non-compliant tank owners when compared to 2020. As of the end of FY 2022, approximately 89% 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. At the end of FY 2022, 60 installers and 48 inspectors were certified. That represents a decrease of 14 installers and 5 inspectors as compared to the end of FY2020. Installers and inspectors must participate in continuing educational training to stay abreast of changing technologies and maintain their certification. The Department continues to provide an annual training program, approved by the Board of Underground Tank Installers for continuing education credits. The 2022 installer training event was held virtually to accommodate COVID-19 social distancing requirements.

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 2021 (July 1, 2020 - June 30, 2021), Department staff completed 179 inspections. In FY 2022 (July 1, 2021 – June 30, 2022), Department staff completed 171 inspections. The Department has implemented a focused inspection strategy. Inspection efforts targeted motor fuel facilities for which no passing third-party annual compliance inspection was submitted in the previous 12 months, or where tank ownership had changed.

4. Aboveground Storage Tanks (AST) Siting Application Reviews

As of the end of FY 2022, there were 158 registered facilities with motor fuel ASTs using underground piping. The State Fire Marshal's Office (SFMO) forwards permit applications for the installation of AST's to the Department to determine compliance with the Department's Chapter 692: Siting of Oil Storage Facilities. Staff reviewed 47 permit applications in FY 2021 and 31 in FY 2022 for compliance with the AST siting requirements. By comparison, in FY 2020, staff reviewed 53 applications forwarded by the SFMO.

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, "Tank Smart", was developed in consultation with the regulated community and meets the requirements of the Act. The program has been available since February 2010 and is free of charge. The program is designed to be cost effective and user friendly. Operators may enter a facility specific registration number and are directed to a series of facility specific training modules or may choose to view all the training modules and become certified as a General Operator and operate any underground storage tank system in the state. Upon successful completion of a computer-generated test, operators may print a certificate to document the training has been completed. A written training program is also available for those that do not have a computer or prefer a written training and testing program.

As of the end of FY 2022, there were 2,351 individuals with current certifications through this program. Of those, 1,021 were General Operators who may operate multiple facilities and 1,233 were operators trained for a specific facility. Many facilities have more than one certified operator and the quality of the "TankSmart" program attracts tank operators from

other states who often take Maine's training program and complete the certification test. Revisions to the twenty-six operator training modules were completed in 2018 and a new training module was added to provide training, testing and a certificate of completion for delivery drivers. Since the new module was launched, 93 industry professionals have been trained.

6. Home Heating Oil Tank Replacement Program

Since the Home Heating Oil Tank Replacement Program began in 1998, over 10,000 aboveground storage tanks at single family residences have been replaced, protecting thousands of private drinking water supply wells, the water supply wells of 17 water districts, 4 public water systems and the sole-source aquifer on 5 islands and on the peninsula of Harpswell. The replacement of tanks determined to be at high risk of failure with new tanks prevents the need for costly clean-ups

In FY 2021, \$750,000 was distributed to Maine's Community Action Programs (CAPs) to replace home heating oil tanks. In FY 2022, \$705,000 was distributed to the CAPs. The current (FY 2023) contracts amount to \$536,800 and individual awards range from approximately \$25,100 to \$115,300. The awards are based on the proportional number of Low-Income Heating Energy Assistance Program (LIHEAP) clients in each CAP district. The CAPs receive an implementation fee of \$325 per tank replaced.

The Department also expended an additional \$181,411 in FY 2021 and \$211,598 in FY 2022 replacing home heating oil tanks determined to be at risk at individual locations state-wide. Homeowner eligibility for this funding is established considering the risk to public health and the environment and through use of a means test to evaluate tank owner income relative to the mean county income.

The replacement program continues to offer conversion to propane as an option. The elimination of any risk from a future oil discharge by providing a propane heating appliance is often a cost-effective solution for oil tanks located outside.

PART II

Clean-Up And Response Fund Review Board

A. Mission of the Clean-up and Response Fund Review Board

The duties of the Clean-up and Response Fund Review Board (Review Board) are established at [38 M.R.S. § 568-B\(2\)](#). The Review Board has the following duties: (1) to hear appeals from insurance claims-related decisions of the Commissioner of the Department of Environmental Protection and the State Fire Marshal's Office, (2) to adopt rules and guidelines necessary for the furtherance of the review board's duties and responsibilities, (3) to monitor income and disbursements from the fund, and adjust fees as required to avoid a shortfall, (4) to at such times and in such amounts as it determines necessary, and in consultation with the department, direct the transfer of funds from the Underground Oil Storage Replacement Fund to the fund, (5) to review department priorities for

disbursements from the fund and make recommendations to the Commissioner on how the fund should be allocated, (6) to review and comment on the State's Marine Oil Spill Contingency Plan, and (7) to review and monitor issues for oil spill prevention and response and recommend to the commissioner any regulatory changes that are appropriate

B. Review Board Governing Law and Composition

In 2019, legislation was passed (PL 2019, c. 314) that reduced the membership of the Review Board from 14 to 9 members and amended quorum requirements and the membership of the appeals panel. Based on this chartered law, the Review Board consists of nine members appointed for 3-year terms, including: the Commissioner of the Department or their designee; the State Fire Marshal or their designee; one person representing the petroleum industry who is a representative of a statewide association of energy dealers; one person with expertise in oil storage facility design and installation, oil spill remediation or environmental engineering; two members of the public who must have expertise in biological science, earth science, engineering, insurance or law; one member representing marine fisheries interests; one member familiar with oil spill technology; one member with expertise in coastal geology, fisheries biology or coastal wildlife habitat and one member who is a licensed state pilot or a licensed merchant marine officer. The Appeals Panel hears and decides appeals from applicants aggrieved by an insurance claims related decision and consists of the member, appointed by the President of the Senate, who has expertise in oil storage facility design and installation, oil spill remediation or environmental engineering; the two members appointed by the Governor who must have expertise in biological science, earth science, engineering, insurance or law and may not be employed in or have a direct and substantial financial interest in the petroleum industry; the member with expertise in coastal geology, fisheries biology, marine fisheries or coastal wildlife habitat appointed by the President of the Senate; and the member who is a licensed state pilot or a licensed merchant marine officer appointed by the Speaker of the House of Representatives. As of the end of FY 2022, there were five vacancies on the Review Board pending appointment. In an attempt to address these vacancies, the Department conducted an extensive search for qualified candidates interested in serving on the Board which included holding outreach meetings with interested parties and submitted recommendations to the various appointing authorities for all five vacant seats. The members listed below were appointed to serve on the Review Board as of the end of FY 2022.

Prentice "Skip" Strong*
Brian Beal*

Susanne Miller, DEP
Richard McCarthy, SFMO

In addition, the following members have since been appointed to fill the remaining vacant seats.

Thomas Schwarm
Charlie Summers
Brenda Downey*

Peter Black*
Brian Tarbuck*

*Appeals panel member

Maine law at [38 M.R.S. § 568-B](#) states that the Review Board shall meet four times per year unless the Board votes not to hold a meeting. Because of several factors including term expiration, member resignation or retirement and an overall lack of interested candidates to fill vacant seats, the

Review Board was unable to meet in FY 2021 or FY 2022 but is scheduled to meet again in May or June of 2023.

C. Appeals Activities

The Review Board had one unresolved appeal carryover from FY2020. During FY 2021, the Review Board received three appeals. During FY 2022, the Review Board received one appeal. Two appeals were resolved by Department staff and subsequently withdrawn without a hearing. The Department continues to work to resolve the remaining three appeals. When the Review Board is operational, the Appeals Panel holds appeal hearings after the conclusion of regularly scheduled meetings. No appeals hearings were conducted by the Review Board during FY 2021 or FY 2022 due to the number of vacant seats.

To address the appeals processing issues resulting from the inability of the Board to hold appeals hearings in a timely manner, the Department proposed LD 74, An Act to Update the Responsibilities of the Clean-up and Response Fund Review Board, to the 131st Legislature. This bill would remove the responsibility for hearing and deciding appeals of Fund insurance claims-related decisions from the Clean-up and Response Fund Review Board and place that responsibility with the Board of Environmental Protection. As of the writing of this report, LD 74 had not yet been reported out of committee but had received a unanimous Ought to Pass as Amended vote during a work session held by the Joint Committee on Environment and Natural Resources.

D. Regulatory Activity

The Clean-up and Response Fund Review Board did not undertake any rulemaking activities in FY 2021 or FY 2022 as the Board did not meet during this time. While LD 74 as proposed by the Department and discussed in more detail above would remove the appeals function of the Board, it would not remove the other responsibilities of the Board including monitoring the fund and its expenditures. Now that all Board seats are filled, the Department will resume coordinating Board meetings to fulfil those responsibilities.

Conclusion

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