

LBA Performance Audit Report Summary:

Fuel Oil Discharge Cleanup Fund - December 2009

The purpose of this audit was to assess the efficiency and effectiveness of the administration of the Fuel Oil Discharge Cleanup Fund (FOD Fund) and related New Hampshire Department of Environmental Services (NHDES) programs administered by the Oil Remediation and Compliance Bureau (Bureau). The audit period is State fiscal years 2008 and 2009.

The Oil Fund Disbursement Board (Board) was created to: establish financial responsibility for cleaning up fuel oil discharge and disposal; create a fund to reimburse cleanup and disposal costs; protect groundwater; and reimburse for third-party damages. The Board is administratively attached to the NHDES and consists of 12 members. It is responsible for overseeing the FOD Fund, the Oil Discharge and Disposal Cleanup Fund, the Motor Oil Discharge Cleanup Fund, and the Gasoline Remediation and Elimination of Ethers Fund by adopting rules for processing applications, verifying claims, and determining reimbursable costs; developing eligibility criteria; waiving penalties and requirements; and presiding over appeals.

Statute requires the FOD Fund to serve as excess insurance to reimburse costs incurred for preventing and cleaning up fuel oil discharge in State water and soil, and for paying third-party damages. The FOD Fund is also used to provide grants to facility owners showing financial need to improve, replace, abandon, or remove sub-standard fuel oil heating systems.

Results in Brief

We found the FOD Fund is effective and functioning as intended for clean up of emergency and high priority spills. The Bureau responds timely to fuel oil spills, with Bureau personnel usually arriving at the spill site within 24 hours of spill discovery. However, insufficient funding has caused the Bureau to delay remediation of lower priority projects and has limited the Bureau's prevention efforts.

To ensure efficient operations, some Board and Bureau processes should be improved. We found a lack of quality control over work scopes, documents defining the nature and extent of remediation work to be performed has resulted in incomplete and inaccurate project documentation. We found weaknesses in Bureau's documentation of some project costs have reduced the Bureau's ability to adequately track total project budgets. Additionally, Board Administrative Rules do not require contractors submit documentation of time worked, while weaknesses in the Bureau's methods for allocating program management and administrative costs, tracking outstanding FOD Fund liabilities, and ensuring revenues collected are recorded accurately have reduced the Bureau's ability to accurately estimate needed resources, including whether anticipated revenues are adequate for FOD Fund activities. We also found the FOD

Fund is used to pay property restoration costs which may not be authorized by statute, and to pay contractors to file documents electronically.

We found the Bureau may not be in compliance with certain statutes, Administrative Rules, and policies and has not conducted a risk assessment on its internal database. We found some insurance determination documentation was absent from the project file or received insufficient follow-up, and Board document retention rules conflict with Bureau policies . Additionally, the Bureau has not followed up to ensure fuel oil tanks comply with regulations prior to approving reimbursement and does not adhere to Board Administrative Rules for establishing corrective action performance standards. Finally, we found New Hampshire has a low deductible before eligibility for reimbursement compared to other Northeastern and Mid-Atlantic states operating similar programs.

Our audit presents 16 observations and recommendations to assist the Board, the Bureau, and the Legislature in ensuring FOD Fund resources are managed efficiently and maximizing the ability to address fuel oil spills and prevent fuel oil discharges. Three observations may require legislative action.