Maryland
Department of
the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 16, 2018

The Honorable Mike V. Miller, Jr., President
Senate of Maryland
State House, H-107
Annapolis MD 21401-1991

The Honorable Michael E. Busch, Speaker
House of Delegates
State House, H-101
Annapolis MD 21401-1991

The Honorable Joan Carter Conway, Chair
Senate Education, Health and
Environmental Affairs Committee
Miller Senate Office Building
2 West Wing
11 Bladen Street
Annapolis MD 21401-1991

The Honorable Kumar P. Barve, Chair
Environment and Transportation Committee
House of Delegates
House Office Building, Room 251
6 Bladen Street
Annapolis MD 21401-1991

Dear President Miller, Speaker Busch, Chairs Conway and Barve:

As required by Chapter 325, Acts of 2014, I am enclosing a copy of the Report on the Long Term Funding Needs of State Oil Pollution Programs.

If the Department can provide you with any additional information, please contact me or Ms. Hilary Miller, Director of the Land and Materials Administration, at 410-537-3304 or via email at *hilary.miller@maryland.gov*.

Sincerely,

Ben Grumbles
Secretary

Enclosures

cc: Sarah Albert, Department of Legislative Services, Mandated Report Specialist
Hilary Miller, Director, Land and Materials Administration

MARYLAND

Department of the Environment

REPORT ON THE LONG-TERM FUNDING NEEDS OF STATE OIL POLLUTION PROGRAMS

Prepared by:

Maryland Department of the Environment

Prepared for:

Michael E. Busch, House Speaker
Maryland General Assembly

Thomas V. Mike Miller, Jr., Senate President
Maryland General Assembly

House Environment and Transportation Committee

Senate Education, Health, and Environmental Affairs Committee

Senate Finance Committee

DECEMBER 31, 2016

Maryland
Department of the Environment

MARYLAND DEPARTMENT OF THE ENVIRONMENT
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I. EXECUTIVE SUMMARY

As required by Chapter 325, Acts of 2014, a work group was convened at the request of the Secretary of the Environment, which consisted of representatives of the petroleum marketing industry and representatives from the Department of the Environment. The group met to analyze the long-term funding needs to maintain the oil pollution programs in the State for the next several years. The work group is pleased to submit these findings and recommendations to the Governor and in accordance with § 2-1246 of the State Government Article, the Legislative Policy Committee, the House Environment and Transportation Committee, the Senate Education, Health, and Environment and Transportation Committee and Senate Finance Committee.

The work group recognized that there continues to be a strong need for the State's oil pollution programs and that those programs need adequate funding to continue to protect the citizens of Maryland and the State's environmental resources. That funding is provided through two State special funds: the Maryland Oil Disaster Containment, Clean-Up, and Contingency Fund ("Oil Fund") and the Oil Contaminated Site Environmental Cleanup Fund ("Reimbursement Fund").

The work group recognized that there will be a shortfall of funding in both funds. This is a result of the current law reducing the oil transfer fee to 5 cents per barrel effective July 1, 2017 and the continued decline in oil imports upon which the fees are levied.

In an effort to provide proper funding to these special funds, the work group makes the following recommendations to preserve the continued operation of the State's oil pollution programs:

- Maintain the oil transfer fee at 8 cents per barrel beginning July 1, 2017 and continuing through June 30, 2019 according to the following:
    - 7.75 cents per barrel will be paid to the Oil Fund; and
    - 0.25 cent per barrel will be paid to the Reimbursement Fund.

- Extend the deadline for applications to the Reimbursement Fund to June 30, 2019.

- Allow for funds from the Oil Fund to be used for the Reimbursement Fund during each of the fiscal years FY18 and FY19.

II. INTRODUCTION

Chapter 325, Acts of 2014 provides that:

"(a) The Secretary of the Environment shall convene a workgroup consisting of representatives of the various sectors of the petroleum marketing industry and representatives from appropriate public and private entities to review and assess the long–term funding needs of the oil pollution programs in the State.

(b) On or before December 31, 2016, the Department of the Environment shall report the findings and recommendations of the workgroup, in accordance with § 2–1246 of the State Government Article, to the Legislative Policy Committee, the House Environment and Transportation Committee, the Senate Finance Committee, and the Senate Education, Health, and Environmental Affairs Committee."

As required, the Maryland Department of the Environment (the Department) convened the work group to study the funding needs of the oil pollution programs in the State. There are two State special funds associated with Maryland's oil pollution programs:

- The Maryland Oil Disaster Containment, Clean-Up and Contingency Fund ("Oil Fund"), and
- The Oil Contaminated Site Environmental Cleanup Fund ("Reimbursement Fund").

The Oil Fund is authorized under § 4-411 of the Environment Article, Annotated Code of Maryland. The Oil Fund is utilized by the Department to operate the State's oil pollution programs. The Reimbursement Fund is authorized under § 4-704 of the Environment Article, Annotated Code of Maryland. The Reimbursement Fund is used to reimburse residential property owners for the proper response and cleanup of their properties contaminated by heating oil from leaking tanks and accidental releases. The Reimbursement Fund is also available to the Department for State spill response actions when necessary.

Each fund's revenues are generated by licensees paying a per barrel (42 U.S. gallons) fee on oil transferred into the State, including motor fuel ethanol and bio-fuels. Anyone transferring oil in the State must have a valid Oil Transfer License and must pay the fee. There were 270 companies licensed with the Department at the end of the 2016 fiscal year. Also credited to the Oil Fund are fines collected for oil pollution violations and recovered costs for certain clean-up expenses incurred by the Department.

The total fee paid by licensees is 8 cents per barrel and is broken down as follows:

- 7.75 cents per barrel will be paid to the Oil Fund; and
- 0.25 cent per barrel will be paid to the Reimbursement Fund.

The work group has studied the long-term needs for these programs and is pleased to submit its findings and recommendations.

III. FUNDING HISTORY AND USE

Oil Disaster Containment, Clean-Up and Contingency Fund
Section 4-411 of the Environment Article, Annotated Code of Maryland, authorizes the Oil Fund. The Oil Fund was established for the Department "to use to develop equipment, personnel, and plans; for contingency actions to respond to, contain, clean-up, and remove from the land and waters of the State discharges of oil, petroleum products, and their by-products into, upon, or adjacent to the waters of the State; and restore natural resources damaged by discharges" - § 4-411(f). The Department is the responsible agency for all oil pollution activities within Maryland. The State has administered a comprehensive program for oil pollution control and oil spill response since 1972.

The Oil Fund is utilized by the Department to operate the Oil Control Program, the Emergency Response Division, and oil-related activities within the Air and Radiation Management Administration and the Water Management Administration. The Oil Fund is also used to respond to and cleanup releases, both above and below ground, where the responsible party is unable or unwilling to perform the corrective action (i.e. orphaned sites). The Oil Fund further sustains other supporting functions within the Department such as attorney actions, enforcement, investigation, and administrative activities.

The Fund revenues are generated by licensees paying an oil transfer fee per barrel of oil transferred into the State. Anyone transferring oil, including motor fuel ethanol and bio-fuels, in the State must have a valid Oil Transfer License and must pay the fee. Also credited to the Fund are fines collected for oil pollution violations and recovered costs for certain expenses incurred for clean-up performed by the Department.

Oil Contaminated Site Environmental Cleanup Fund
The Maryland General Assembly, recognizing the need for the cleanup of sites contaminated by oil from leaking underground storage tanks, created the Reimbursement Fund, effective July 1, 1993 (Chapter 465, Acts of 1993). The Reimbursement Fund was used until July 2000 to reimburse only owners or operators of underground storage tanks (USTs) storing commercial motor fuels, used oil, or fuel for operating emergency generators for site remediation and cleanup costs incurred on or after October 1, 1993.

During the 1996 legislature, the Reimbursement Fund was amended and enacted as Chapter 532, Acts of 1996. The statute provided a limit of $125,000 per occurrence subject to deductibles that ranged from $7,500 to $20,000.

At the end of Fiscal Year 1999, a funding shortfall of approximately $3,000,000 existed for applicants to the Reimbursement Fund. House Bill 457 (Chapter 604, Acts of 2000) addressed the shortfall by providing additional funding for the Reimbursement Fund until July 1, 2005. Effective July 1, 2000, a fee of 1 cent per barrel was applied to oil at the first point of transfer in the State. The Department was authorized to use up to 8 percent of the revenue in the Reimbursement Fund during the fiscal year for the administration of the Reimbursement Fund.

Chapter 604, Acts of 2000, also expanded the eligibility of the Reimbursement Fund to include owners of commercial underground storage tanks storing heating oil and to owners of residential heating oil tanks. Owners of residential heating oil tanks were eligible for reimbursement of up to $10,000, less a $1,000 deductible, for certain site rehabilitation costs incurred after October 1, 2000. A minimum of 25 percent of the 1 cent per barrel fee collected per fiscal year was used for reimbursement of residential heating oil tank site rehabilitation costs.

Long-Term Funding Work Groups

Chapter 604, Acts of 2000, required the Secretary of the Environment to convene a work group consisting of representatives from the various sectors of the petroleum marketing industry as well as representatives from appropriate public and private entities "to review and assess long-term funding needs of the oil pollution programs in the State." The Department was required to report findings and recommendations of the work group to the Legislative Policy Committee, the House Environmental Matters Committee, and the Senate Economic and Environmental Affairs Committee no later than November 1, 2004 (Chapter 604, Acts of 2000).

As a result of the work group's findings and recommendations report, Senate Bill 814 "Environment - Maryland Oil Disaster Containment, Clean-Up and Contingency Fund and Oil Contaminated Site Environmental Cleanup Fund" was proposed in the 2005 Maryland General Assembly. The bill was adopted (Chapter 177, Acts of 2005) into law and became effective July 1, 2005. This legislation altered the amount of the per barrel fee for oil transferred into the State and credited to the Oil Fund and the Reimbursement Fund. The per barrel fee credited to the Oil Fund was 4 cents per barrel and the per barrel fee credited to the Reimbursement Fund was 1.75 cents beginning July 1, 2005 until July 1, 2010.

The legislation also extended the termination date to December 31, 2007 for requests for reimbursement by owners or operators of commercial heating oil and other non-federally regulated underground storage tanks. It further stated that applications must be received by the Department no later than six months after site rehabilitation completion. The legislation extended reimbursement for owners of residential heating oil tanks until June 30, 2010, reduced the deductible to $500, and raised the maximum amount to be reimbursed to $20,000 per occurrence.

Prior to the extension ending on June 30, 2010, the Secretary of the Environment convened a work group to again review and to assess long-term funding needs of the oil pollution programs in the State. As a result of the work group's recommendations on the state of funding, Senate Bill 1117 "Environment - Maryland Oil Disaster Containment, Clean-Up and Contingency Fund and Oil Contaminated Site Environmental Cleanup Fund" was proposed in the 2010 Maryland General Assembly.

The bill was adopted (Chapter 377, Acts of 2010) into law and became effective July 1, 2010. The total per barrel fee of 5.75 cents remained the same; however, the amount credited to the Oil Fund beginning July 1, 2010 until June 30, 2013 was increased from 4 cents per barrel to 5.75 cents, while the per barrel fee credited to the Reimbursement Fund changed from 1.75 cents to zero. The legislation also reduced the per barrel fee deposited into the Oil Fund to 3 cents per barrel beginning July 1, 2013. In addition to the Oil Fund being used for discharges of oil, petroleum products and their by-products, Chapter 377 allowed the Oil Fund to also be used by the Department for oil-related activities in water pollution control programs.

Reimbursements were to continue using the balance of the Reimbursement Fund. Owners of a residential heating oil tank eligible under the Reimbursement Fund could apply no later than 6 months after rehabilitation completion until June 30, 2013 for costs incurred on or after October 1, 2000 up to a maximum amount of $20,000, less a $500 deductible.

Chapter 377, Acts of 2010 also required the Secretary of Environment to convene a work group to review and assess long-term funding needs of the oil pollution programs in the State and report the findings and recommendations no later than December 31, 2012. The 2012 Work Group recommended that the fee be increased to 8 cents per barrel, with the entire 8 cents credited to the Oil Fund and no additional funding to the Reimbursement Fund. Legislation was introduced but failed to pass through the General Assembly resulting in $3.5 million being transferred from the Reimbursement Fund to the Oil Fund and the oil transfer fee being reduced to 3 cents per barrel beginning July 1, 2013. The Residential Heating Oil Tank Site Cleanup Reimbursement Program stopped accepting applications July 1, 2013.

During the 2014 legislative session, Chapter 325, Acts of 2014 was adopted into the law, effective July 1, 2014. The total per barrel fee increased to 8 cents per barrel, with 7.75 cents per barrel credited to the Oil Fund and 0.25 cent per barrel credited to the Reimbursement Fund. Since the legislation restarted funding to the Reimbursement Fund, the Residential Heating Oil Tank Site Cleanup Reimbursement Program began accepting applications again beginning July 1, 2014.

IV. WORK GROUP ANALYSIS

As required by Chapter 325, Acts of 2014, a work group was convened at the request of the Secretary of the Environment. The work group members consisted of representatives from industry and the Department. The work group met to analyze the long-term funding needs to maintain the oil pollution programs in the State for the next several years.

The work group estimated the total funding level needed by Maryland's oil pollution programs for FY18 and FY19 (Table 1). The work group also determined that using an annual importation volume of 95,000,000 barrels of oil was realistic based upon the current annual trends (Figure 1). Based on the projected needs, the work group found that continuing the 7.75 cents per barrel fee would maintain the various oil pollution programs that rely on the Oil Fund (Table 2).

Also, the work group determined that continuing the 0.25 cent per barrel fee paid to the Reimbursement Fund was needed to provide a baseline level of reimbursements to Maryland residents through FY19 (Table 3). At this funding level, the Department may need to prioritize reimbursements to applicants based upon available fund balances. Additionally, the workgroup identified the need to allow the Department the authority to use funding from the Oil Fund for the purposes of the Reimbursement Fund during FY18 and FY19 to maintain sufficient funding to allow reimbursements to continue uninterrupted.

V. CONCLUSIONS AND RECOMMENDATIONS

The citizens and businesses within the State of Maryland rely heavily on the use of petroleum products and bio-fuels for transportation, heating, and other fuel use needs. Through conservation efforts, the use of alternative fuels, and current economic conditions, the total import of petroleum products and bio-fuels has declined. Because of the continued decline of the import of oil (Figure 1), the continued needs of the oil control programs (Figure 2), and the oil fee rate of 5 cents per barrel scheduled to begin July 1, 2017, the Oil Fund will not be sustainable to fund the State's oil pollution programs for the long-term.

The need to prevent releases through strict regulatory requirements and the need to properly staff the regulatory programs remains. Also, as the petroleum storage infrastructure ages and by accidental discharge, releases remain a common occurrence and continue to be a threat to the public and the environment. An adequate State response program must remain in place. Therefore, the work group has concluded that the oil program funds should remain available and funded to a degree that provides the protection and resources deserving of the citizens of Maryland and the State's environment.

The review of the Reimbursement Fund has found there is a continued need for assisting owners of heating oil tanks with release response. The work group finds no reason to change the limits of reimbursement ($20,000) and believes that the current $500 is appropriate.

The work group further finds that periodic long-term funding reviews remain justified in order to address future economic and regulatory conditions.

Recommendations

The work group makes the following recommendations to preserve the continued operation of the State's oil pollution programs:

- Maintain the oil transfer fee at 8 cents per barrel beginning July 1, 2017 and continuing through June 30, 2019 according to the following:
    - 7.75 cents per barrel will be paid to the Oil Fund; and
    - 0.25 cent per barrel will be paid to the Reimbursement Fund.

- Extend the deadline for applications to the Reimbursement Fund to June 30, 2019.

- Allow for funds from the Oil Fund to be used for the Reimbursement Fund during each of the fiscal years FY18 and FY19.

VI. WORK GROUP MEMBERS

Maryland Department of Environment
- Horacio Tablada, Deputy Secretary
- Jeffrey Fretwell, Director, Legislative and Intergovernmental Relations
- Hilary Miller, Director, Land Management Administration
- Kaley Laleker, Deputy Director, Land Management Administration
- Christopher Ralston, Administrator, Oil Control Program
- Cynthia Keller, Administrator, Technical Services and Operations Program

Maryland Petroleum Council
- Drew Cobbs

Mid-Atlantic Petroleum Distributors Association
- Ellen Valentino

TABLE 1

Oil Pollution Program Funding Need Projections for FY18 through FY19

MDE Administration	FY18	FY19	2 Year Total
LMA	$5,512,500	$5,788,125	**$11,300,625**
ERD	$2,625,000	$2,756,250	**$5,381,250**
WMA	$262,500	$275,625	**$538,125**
ARMA	$262,500	$275,625	**$538,125**
Total Projected Need	**$8,662,500**	**$9,095,625**	**$17,758,125**

Notes

- Projections based upon estimated need for FY18 and a 5% increase per year.
- Department Administrations that support the State's Oil Pollution Programs:
    - LMA – Land Management Administration
    - ERD – Emergency Response Division
    - WMA – Water Management Administration
    - ARMA – Air and Radiation Management Administration

TABLE 2

Projected Fiscal Year Balances for the Oil Fund with
7.75 cents / Barrel Oil Transfer Fee

	FY18	FY19
Beginning Balance	$3,000,000	$1,700,000
Fee Revenue	$7,362,500	$7,362,500
Total	$10,362,500	$9,062,500
Projected Need	($8,662,500)	($9,095,625)
Balance	$1,700,000	($33,125)

Note

- All fees based on 95 million barrels imported.
- FY 2019 projected need is based on a 5 percent increase in expenditures from FY 2018.

TABLE 3

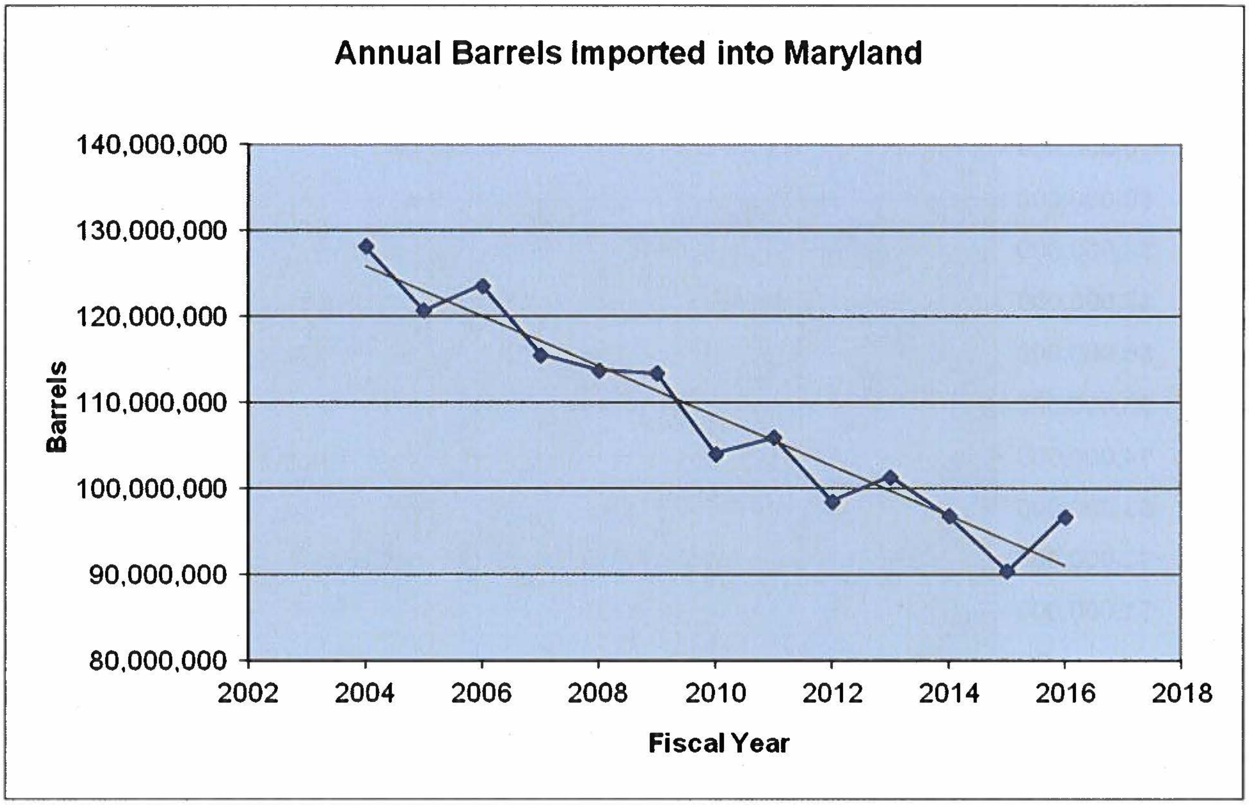
Projected Fiscal Year Balances for the Reimbursement Fund with
0.25 cents / Barrel Oil Transfer Fee

	FY18	FY19
Beginning Balance	$500,000[1]	$197,500
Fee Revenue[2]	$237,500	$237,500
Total	$737,500	$435,000
Reimbursements	($500,000)	($500,000)
Administrative Costs	($40,000)[3]	($40,000)[3]
Balance	$197,500	($105,000)

Notes

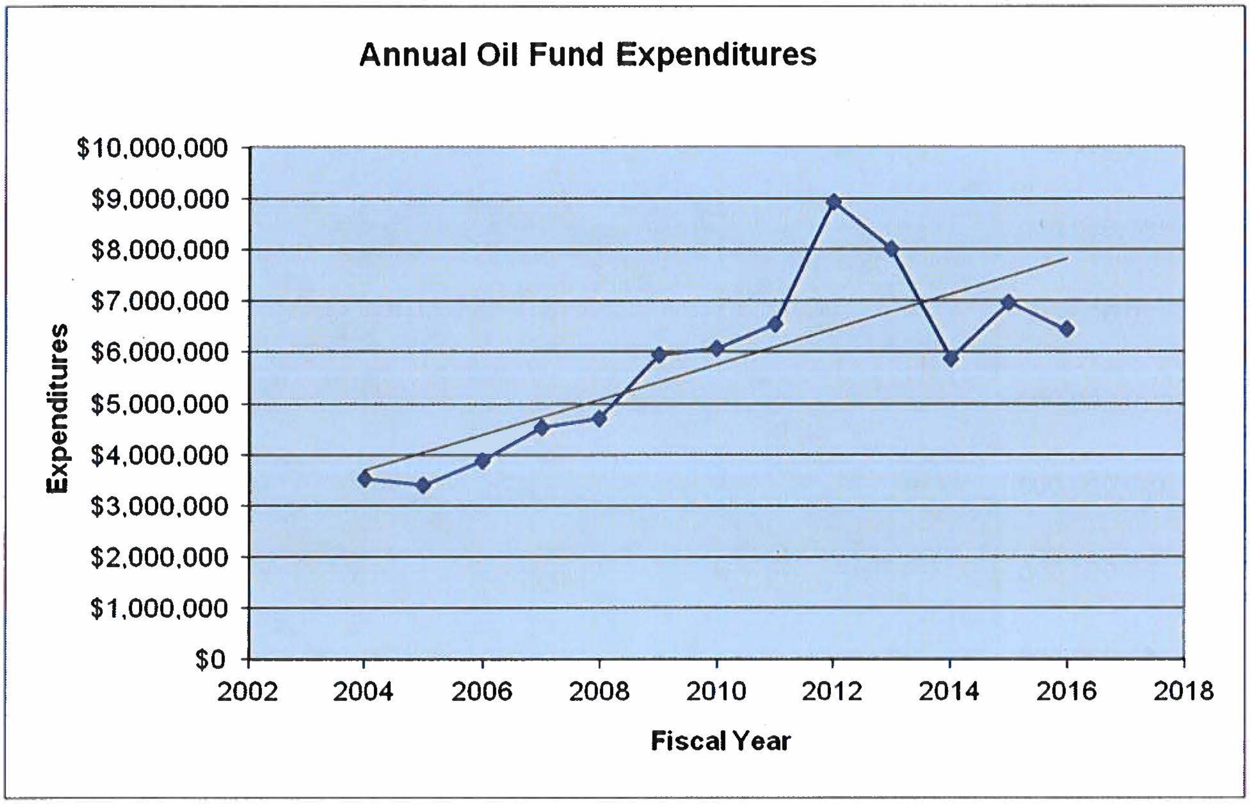
1. The FY18 beginning balance will need to be created based upon a transfer from the Oil Fund to the Reimbursement Fund. It is also noted, that a similar fund transfer will be needed for FY19.
2. All fees based on 95 million barrels imported.
3. Based on 8 percent of revenue.

FIGURE 1



Fiscal Year	Barrels
2004	128,253,670
2005	120,774,792
2006	123,646,123
2007	115,566,185
2008	113,775,441
2009	113,417,135
2010	104,120,667
2011	105,970,587
2012	98,543,583
2013	101,377,283
2014	96,808,859
2015	90,407,813
2016	96,774,020

FIGURE 2



Fiscal Year	Expenditures
2004	$3,531,679
2005	$3,396,257
2006	$3,882,574
2007	$4,524,436
2008	$4,704,938
2009	$5,947,658
2010	$6,075,753
2011	$6,546,759
2012	$8,927,719
2013	$8,018,363
2014	$5,861,609
2015	$6,965,453
2016	$6,427,975