

Agricultural Chemical Response and Reimbursement Account (ACRRA) Stakeholder Meetings

Roger Mackedanz | ACRRA Executive Director

Stakeholder Meetings 2021



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Legislative Action

SF 958 - 4th Engrossment - 92nd Legislature (2021 - 2022)

4tSec. 25. REPORT REQUIRED; AGRICULTURAL CHEMICAL RESPONSE AND REIMBURSEMENT ACCOUNT PROGRAM.

The commissioner of agriculture must convene stakeholders and develop recommendations regarding the maximum reimbursement or payment amount under Minnesota Statutes, section 18E.04, subdivision 4. The report must include an analysis of what the maximum reimbursement or payment would be if adjusted for inflation. By February 1, 2022, the commissioner must report these recommendations to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over agriculture finance. Participating stakeholders must be given an opportunity to include written testimony to the legislative committees in the commissioner's report.

History of ACRRA Reimbursements

The ACRRA program was created as part of the 1989 Minnesota Groundwater Protection Act to provide financial assistance for cleaning up incidents causing agricultural chemical contamination.

The ACRRA program funds are administered by the Agricultural Chemical Response Compensation Board. The five-member board consists of representatives from agricultural chemical registrants, manufacturers/dealers, farmers, and the Commissioners of the Minnesota Departments of Agriculture and Commerce.

The ACRRA Board is governed by Minnesota Statute 18E and Minnesota Rules 1512.0100- 1512.1100.

Board Members

Jeff Wheeler, Chair
Retailer Representative

James Hlatky, Vice Chair
Farmer Representative

Janet Hou, Board Member
Manufacturing Representative

Joel Fischer, Petrofund Director
for Grace Arnold, Commissioner of Commerce

Whitney Place, Assistant Commissioner
for Thom Petersen, Commissioner of Agriculture

ACRRA Reimbursements

The ACRRA statute is set up to reimburse for costs incurred by incident.

The definition of incident is:

"Incident" means a flood, fire, tornado, transportation accident, storage container rupture, leak, spill, emission discharge, escape, disposal, or other event that releases an agricultural chemical accidentally or otherwise into the environment and may cause unreasonable adverse effects on the environment. Incident does not include a release from the normal use of a product or practice in accordance with law.

ACRRA Reimbursements-page 1

In order for the Commissioner to make reimbursements to an eligible party the following has to be met:

Reimbursement of response costs.

The commissioner shall reimburse an eligible person from the agricultural chemical response and reimbursement account for the reasonable and necessary costs incurred by the eligible person in taking corrective action as provided in subdivision 4, if the board determines:

- (1) the eligible person takes all reasonable action necessary to minimize and abate an incident and the action is subsequently approved by the commissioner;
- (2) the eligible person complies with any reasonable requests for corrective action issued to the eligible person by the commissioner;
- (3) the eligible person complied with corrective action orders if issued to the eligible person by the commissioner; and
- (4) the incident was reported as required in chapters 18B, 18C, and 18D.

ACRRA Reimbursements- page 2

When the ACRRA statute was passed back in 1989 it was understood that this program should reimburse for cleanup of “historical contamination”, meaning contamination that was currently in place and may not have met all of the requirements outlined above so the following language was inserted in the statute:

“(e) The board may not make reimbursement greater than the maximum allowed under paragraph (a) for all incidents on a single site which:

- (1) were not reported at the time of release but were discovered and reported after July 1, 1989; and
- (2) may have occurred prior to July 1, 1989, as determined by the commissioner.

(f) The board may only reimburse an eligible person for separate incidents within a single site if the commissioner determines that each incident is completely separate and distinct in respect of location within the single site or time of occurrence.

ACRRA Reimbursements- page 3

"Single site" for purposes of this chapter means all land and water areas, including air space, and all plants, animals, structures, buildings, contrivances, and machinery whether fixed or mobile including anything used for transportation within a one-half mile radius of a discovered or reported incident where agricultural chemical handling, storage, disposal, and distribution activities have occurred or are now occurring.

1999 Legislative Initiatives & Legislation Affecting ACRRA Program

During fall-winter, 1998-99, a work group met to discuss and evaluate possible 1999 legislative initiatives.

Several issues were discussed:

- raising of the \$200,000 “cap”;
- restricting reimbursement or payment of “mark up” type environmental consultant/contractor costs incurred during clean ups;
- administrative need for limiting opportunities to access ACRRA reimbursement;
- illegal storage at and recontamination of previously “cleaned up” facilities; and
- local government restrictions on the use of MN municipal airports by licensed aerial pesticide applicators.

In the end, consensus of participating parties of the Work Group was not achieved—particularly with regard to the two core issues—and the Commissioner of Agriculture subsequently made no legislative proposals on behalf of the ACRRA Program.

1999 Legislative Initiatives & Legislation Affecting ACRRA Program

LEGISLATION

Four statutory amendments were made by the 1999 legislature to the ACRRA Law, Minn. Stat. 18E.:

- The Annual Report of the ACRRA Board/Program needed to be submitted to the House of Representatives Committee on Ways and Means, the Senate Committee on Finance, the House of Representatives and Senate Committees with jurisdiction over the environment, natural resources, and agriculture, and the Environmental Quality Board;
- The definition of “eligible person” was amended to include owners of Minnesota municipal airports, under conditions specified in Minn. Stat. 18E.02, Subd. 5., (2);
- The following provision was added under the title “Financial Security; Municipal Airports”: “As a condition for the use of space or facilities for the storage, handling, or distribution of agricultural chemicals on the grounds of a municipal airport, a licensed aerial pesticide applicator shall hold the owner of the airport harmless for any expenses to cover necessary corrective actions caused by the applicator.” [SEE, Minn. Stat. 18E.035.j; and,
- An “Aerial Applicator Liability Study” was required of the Commissioner of Agriculture.

Minnesota Statutes § 18E.04, subdivision 4, was changed during the 2000 Legislative Session (House File 3312, Chapter 477) at the request of industry representatives. Changes included:

- increased the maximum allowable reimbursement payable to eligible persons under ACRRA. The maximum eligible costs for corrective actions for incident cleanups increased from \$200,000 to \$350,000; and
- applied an eighty percent (80%) reimbursement for costs between \$200,000 and \$300,000 and a sixty percent (60%) reimbursement for costs between \$300,000 and \$350,000.

These changes provided a maximum potential increased funding per incident site of \$110,000.

Minnesota Statutes § 18E.04, subdivisions 2, 4 and 5, were changed during the 2001 Legislative Session (House File 10, 2001 Special Session). Changes included:

- a reduction of the reimbursement percentage from 100% to 90% for eligible costs between \$100,000 and \$200,000;
- a requirement that all eligible costs are submitted within three years after cost incurrence or corrective action report approval, whichever is later (any costs incurred over three years prior to July 1, 2001, must be submitted by June 1, 2004); and
- procedures for requesting a hearing before the ACRRA Board when a decision on a reimbursement or payment has an adverse effect on the eligible person. These changes went into effect as of July 1, 2001. All costs incurred by eligible persons after the effective date will be subject to the changes.

2002 Legislative Session

Minnesota Statutes §18E.02 subdivisions 5(a) and 5(b); §18E.03 subdivision 4; §18F.04 subdivisions 2, 3, and 4; and § 18E.06 were changed during this session (Minnesota Session Laws 2002, Chapter 373, House File 3183). Changes included:

- limited the maximum reimbursement to 80 percent of total eligible costs;
- limited surcharges on licenses fees to 50 percent of the license fee;
- limited the amount that an eligible person can collect within the same fiscal year to \$100,000 if the balance in the ACRRA fund is below \$2,000,000;
- defined “Emergency Incidents” and “Recontamination” to clarify language contained in statute (see below);
- limited reimbursements to a maximum rate of 60 percent if recontamination from a subsequent incident exists within 5 years(see definition below); and
- changed the date the Annual Report is due from September 1 to December 1.

Added Definitions:

- Emergency Incident means an incident resulting from a flood, fire, tornado, transportation accident, storage container rupture or other event as determined by the Commissioner of Agriculture that immediately, uncontrollably and unpredictably releases agricultural chemicals into the environment, and which may cause unreasonable adverse effects on the public health or the environment.
- Recontamination means an agricultural chemical incident that occurs in a specific land area where corrective actions were taken to address a previous incident. Recontamination does not include an emergency incidents.

History of Statute Changes in 18E regarding reimbursable amounts

Initial- 90% - \$1,000 - \$100,000
100%- \$100,000 - \$200,000

2001 90% - \$1,000 - \$200,000
80% - \$200,000 - \$300,000
60% - \$300,000 - \$350,000

2000 90% - \$1,000 - \$100,000
100% - \$100,000 - \$200,000
80% - \$200,000 - \$300,000
60% - \$300,000 - \$350,000

2002 80% - \$1,000 - \$350,000

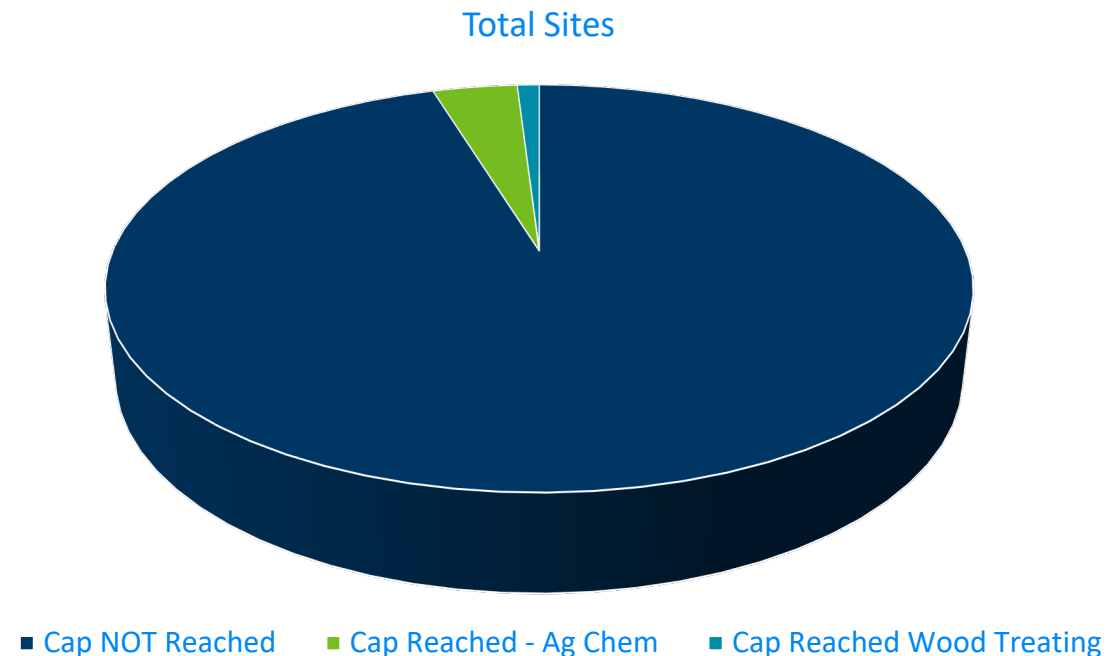
History of ACRRA Reimbursements as of 6/30/2021

- Since inception, the ACRRA program has disbursed over \$50 million to cover eligible corrective action clean-up costs.
- There have been 1,465 applications processed for 630 sites.
- 30 sites have gone over the maximum amount of \$350,000 allowed per site.

History of ACRRA Reimbursements as of 6/30/2021 Pie Chart

A total of 4.8% sites have reached their cap.

Of the 30 sites that have reached the cap, 24 are agricultural chemicals sites and six are wood treating sites.



History of ACRRA Reimbursement

The MDA Commissioner sets the surcharge rate to maintain a minimum balance of one million dollars and an upper balance of five million dollars.

Changes to the Incident Response Program:

High risk areas (dates below are approximate):

Between 1990 and 2006, one key high risk area added:

- Beneath the floor of dry fertilizer buildings (had always included dry fertilizer buildings, but did not look beneath floor at start of IRU cleanup programs in ~1990)

Since 2006, two high risk areas have been added:

- Anhydrous ammonia loading areas and piping
- Load-in and load-out areas

Changes to the Incident Response Program: AgESAs/Phase I ESAs:

AgESAs/Phase I ESAs:

If completed prior to discovery, recommended as not eligible to ACRRA staff.

Approximately 2004-2005, IRU started requiring AgESAs on all sites, so IRU recommended reimbursement to ACRRA staff.

Costs for AgESA may be more significant than for a typical Phase I ESA.

Changes to the Incident Response Program: Typical MDA List 1 and 2 costs vs. Specialty Pesticide Costs

Typical MDA List 1 and 2 costs vs. Specialty Pesticide Costs

Costs submitted with ACRRA application for April 2020 Board Meeting. Ten (10) invoices were submitted with analytical costs that included specialty pesticides. Invoices were dated February 5, 2018 through September 19, 2019.

Soil Analytical Costs, per sample

	<u>Pace-Madison</u>	<u>Pacific Ag Lab</u>	<u>South Dakota Ag Lab</u>
MDA List 1	\$124		
MDA List 2	\$171		
Specialty Pesticides		\$325-\$375	\$165-\$1177

Water Analytical Costs, per sample

	<u>Pace-Madison</u>	<u>Pacific Ag Lab</u>	<u>South Dakota Ag Lab</u>
DATCP (List 1)	\$124		
Acid (List 2)	\$242		
Specialty Pesticides			\$377

Changes to the Incident Response Program: IMPORTANT NOTES:

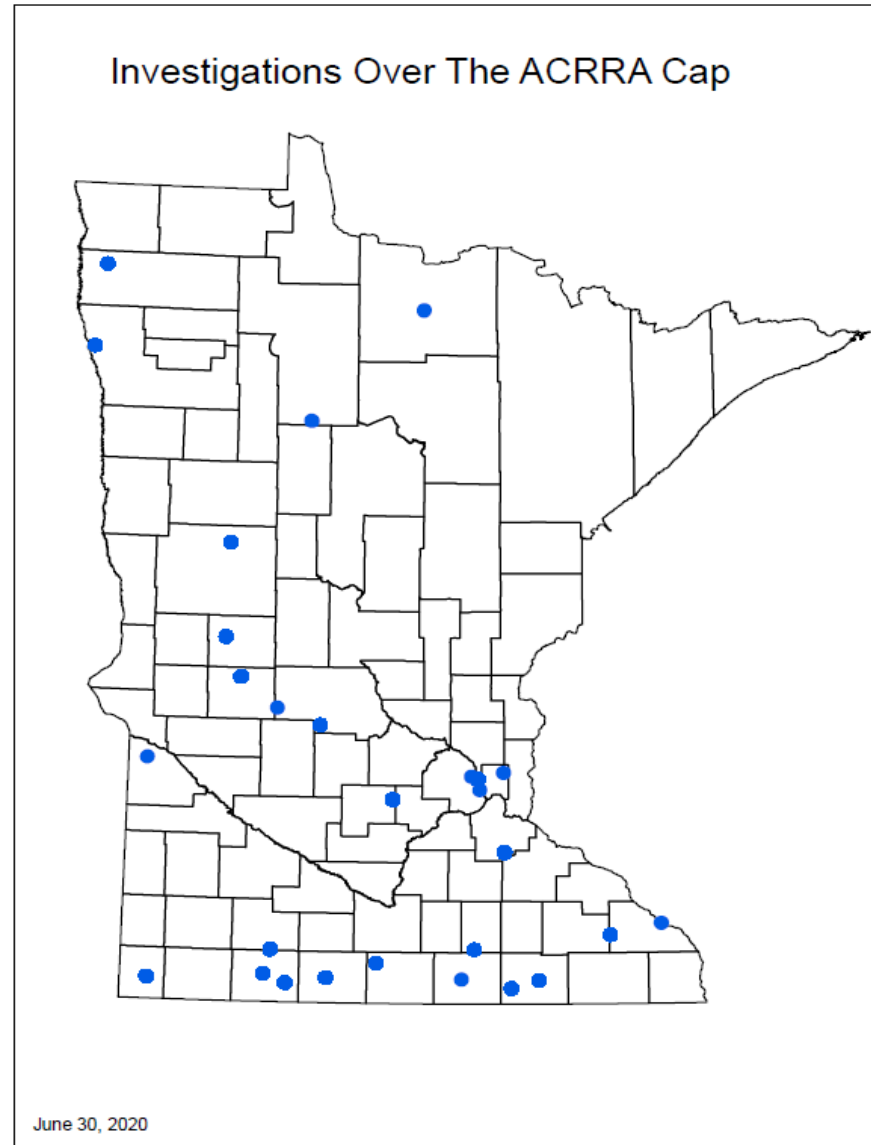
IMPORTANT NOTES:

MDA does not have a set list of specialty pesticides at this time

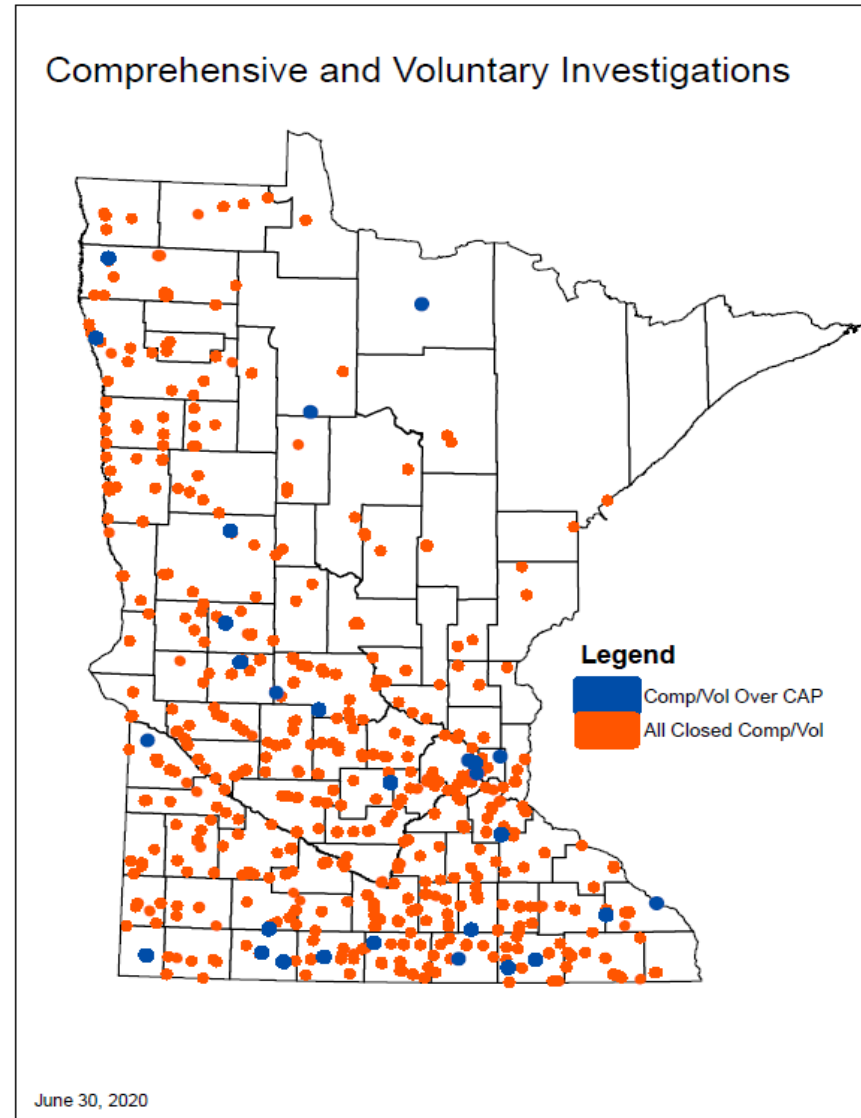
Compounds included in specialty pesticide analyses vary by project

Compound lists for specialty pesticides can vary within each project over time

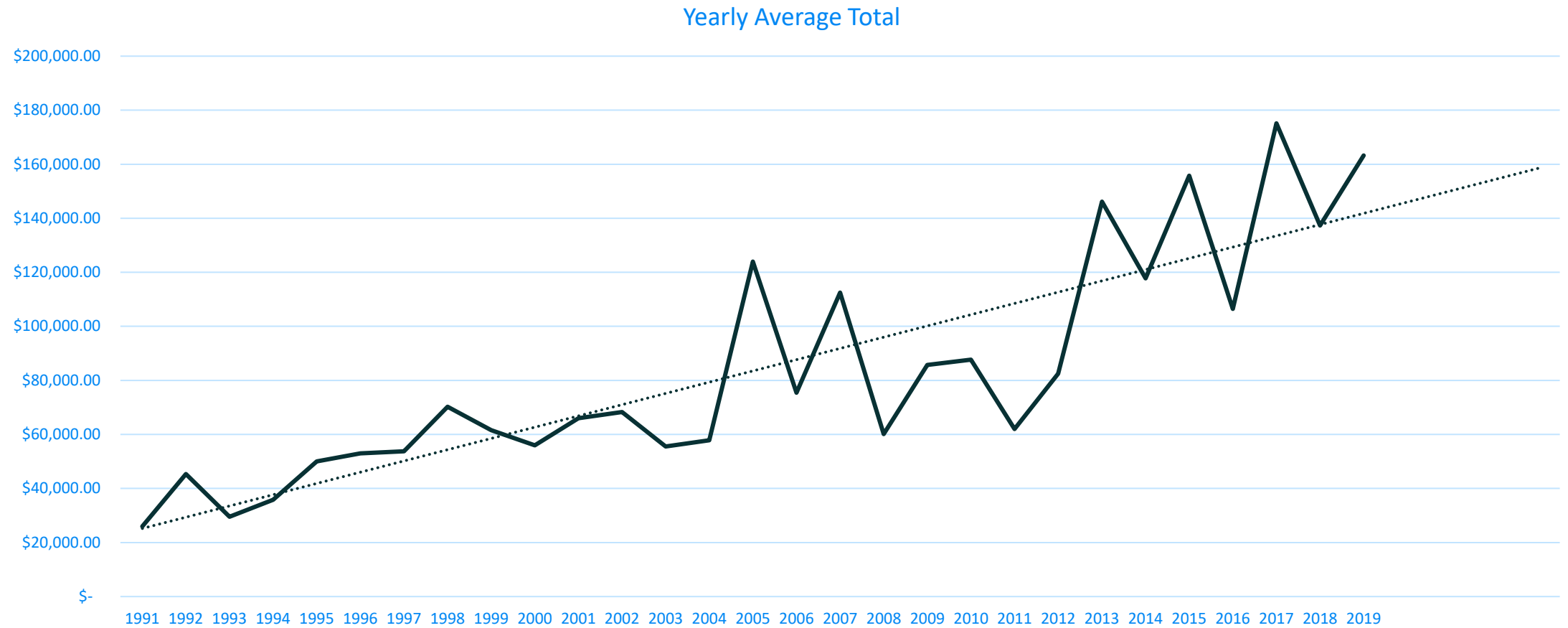
Investigations Over The ACRRA Cap



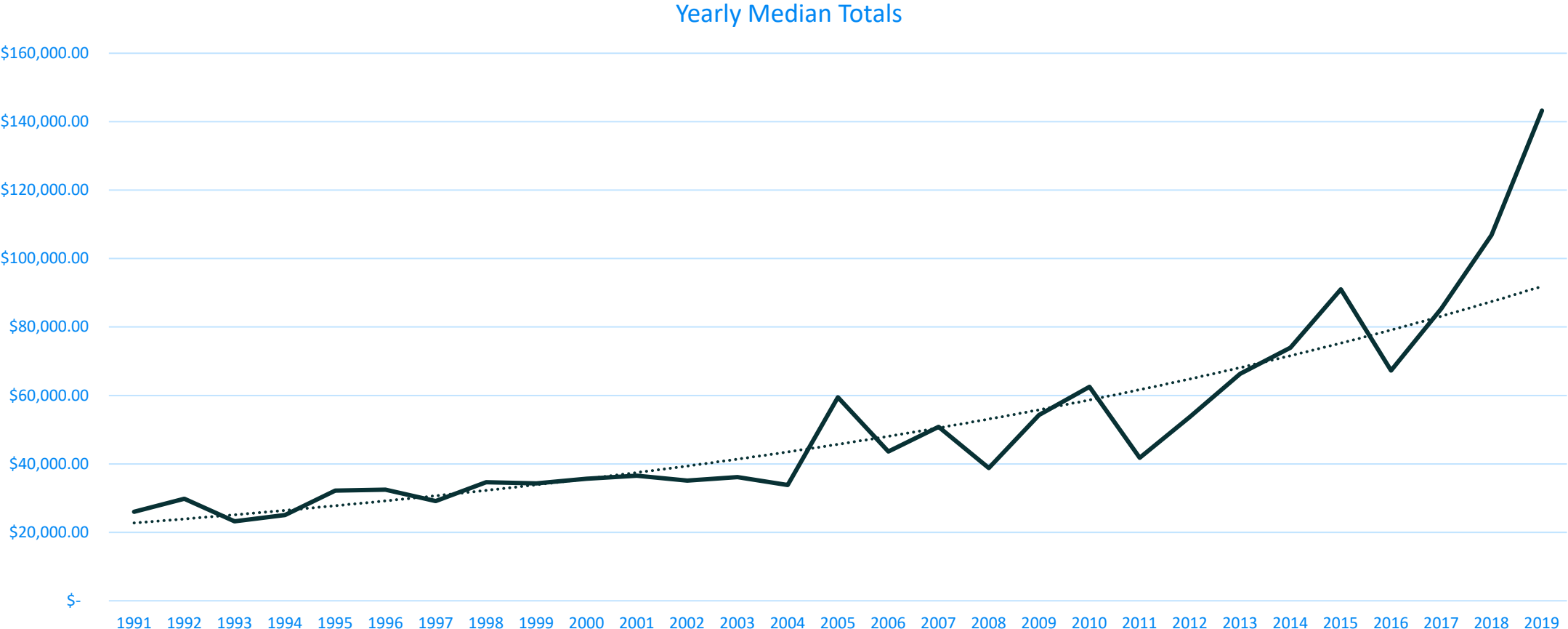
Comprehensive and Voluntary Investigations



Yearly Average Total

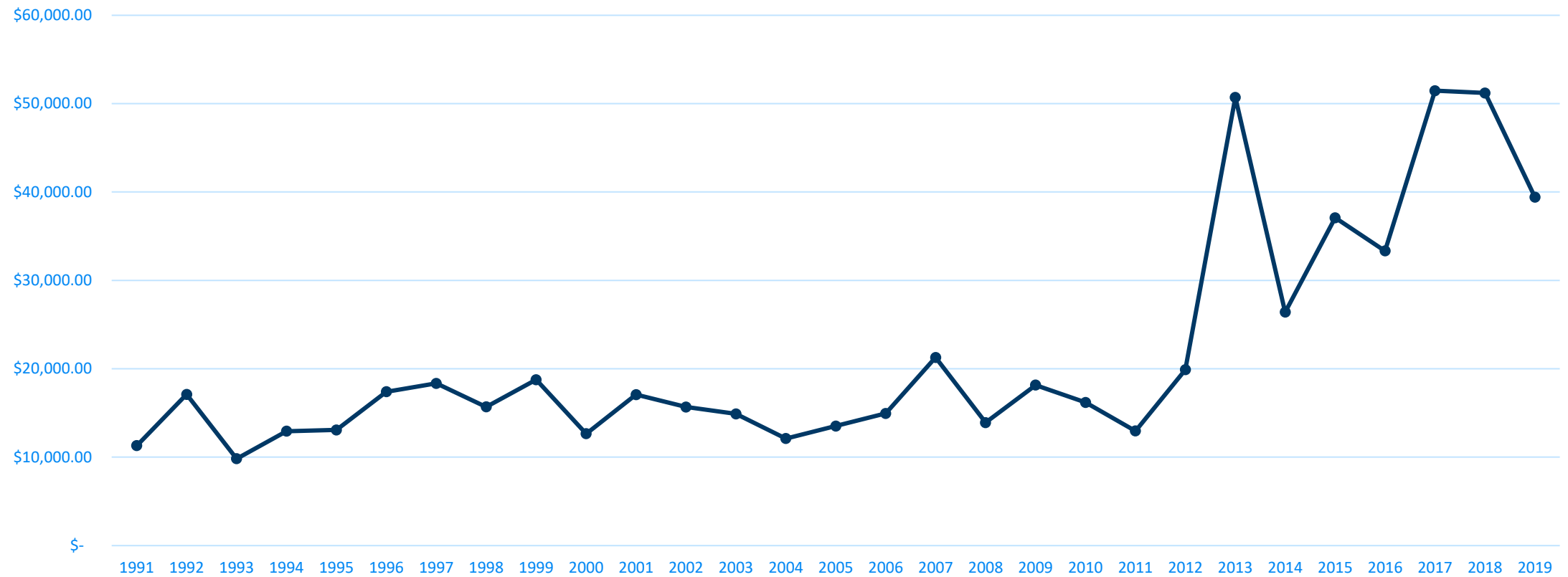


Yearly Median Total



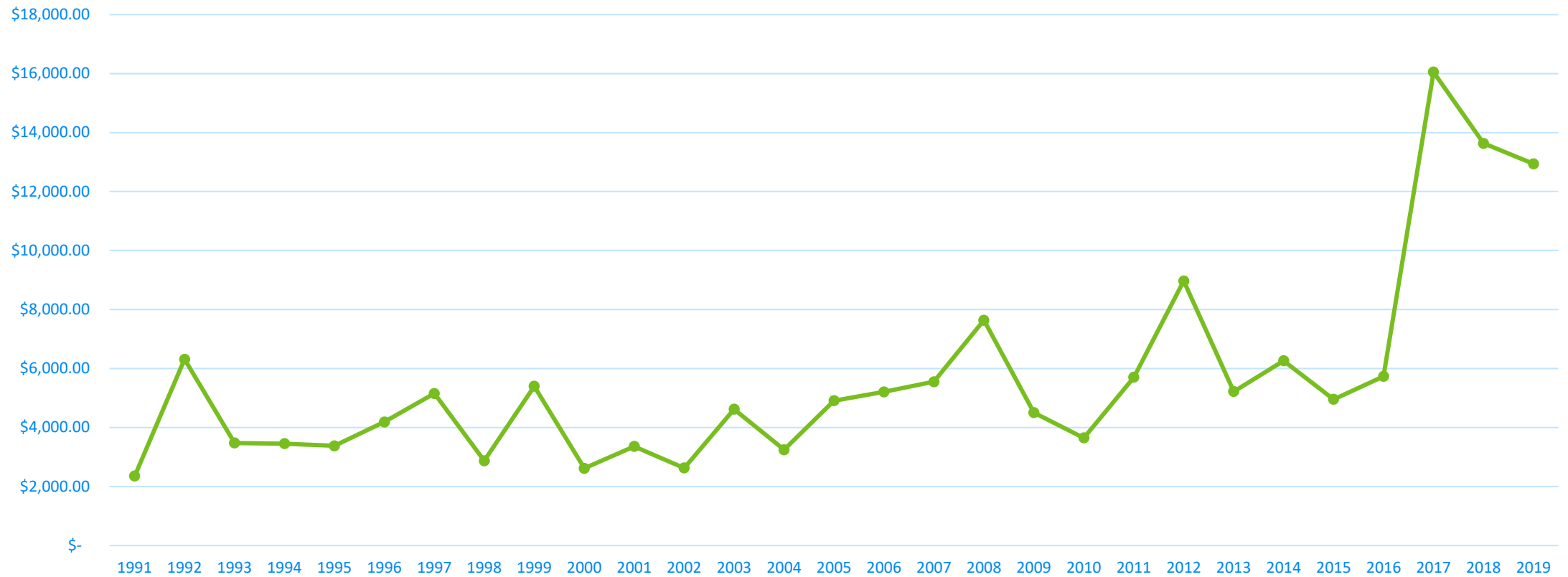
Consultant Cost

Consultant



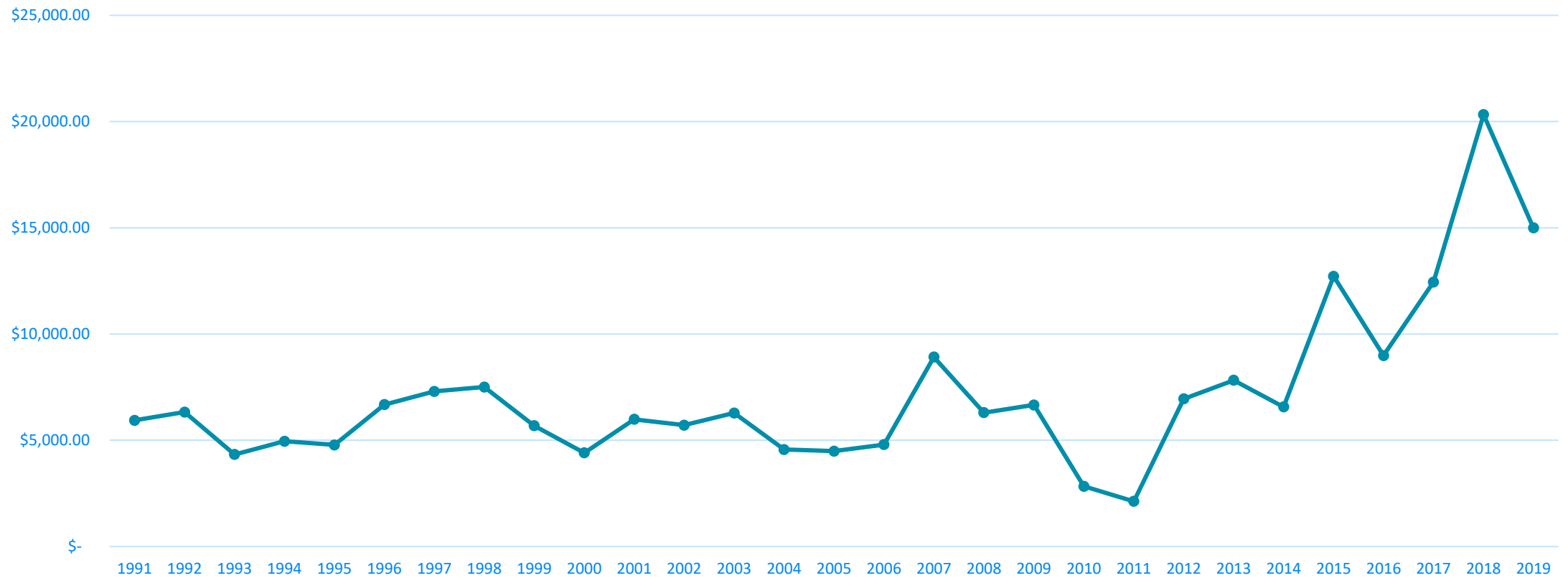
Boring and Wells Cost

Borings and Wells



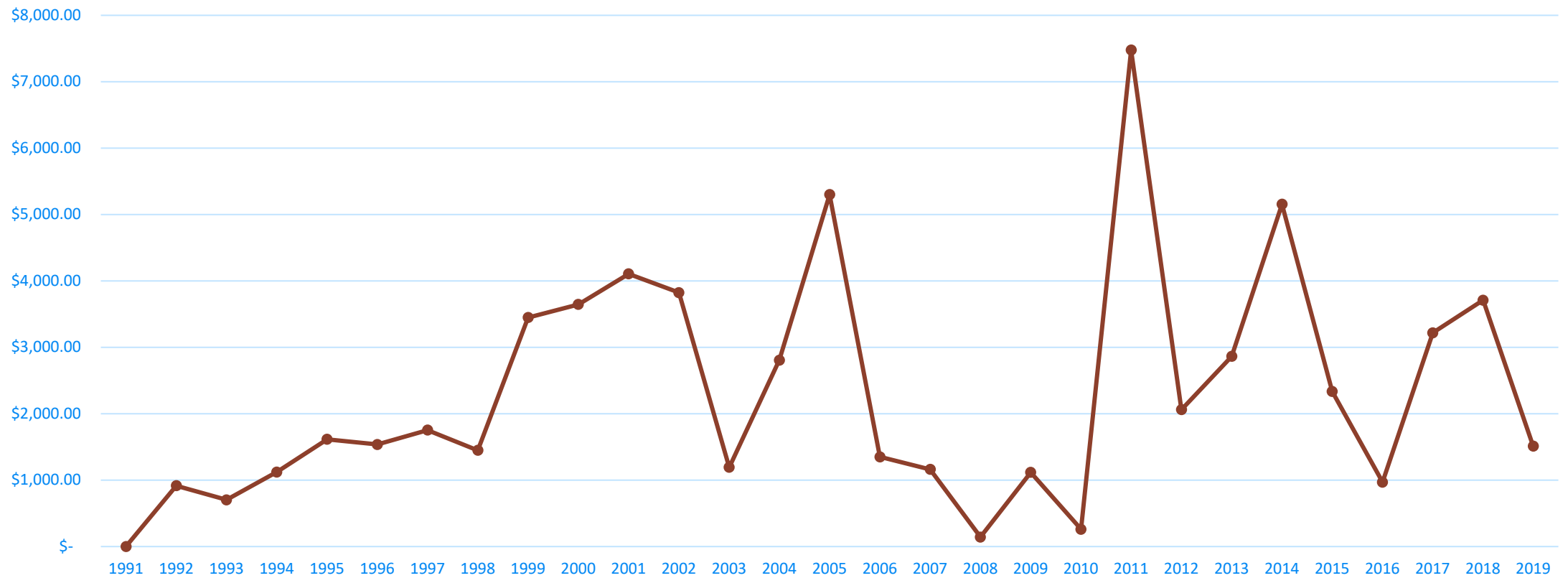
Laboratory Cost

Laboratory



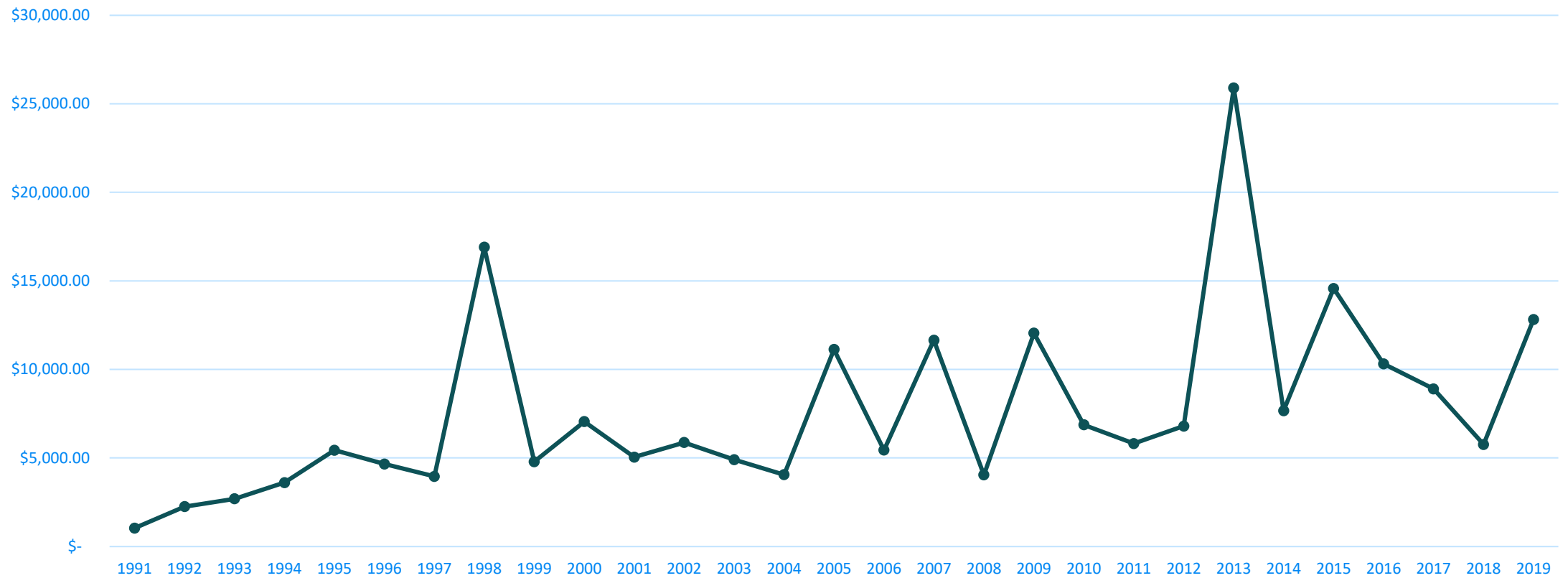
Equipment Rental Cost

Equipment Rental



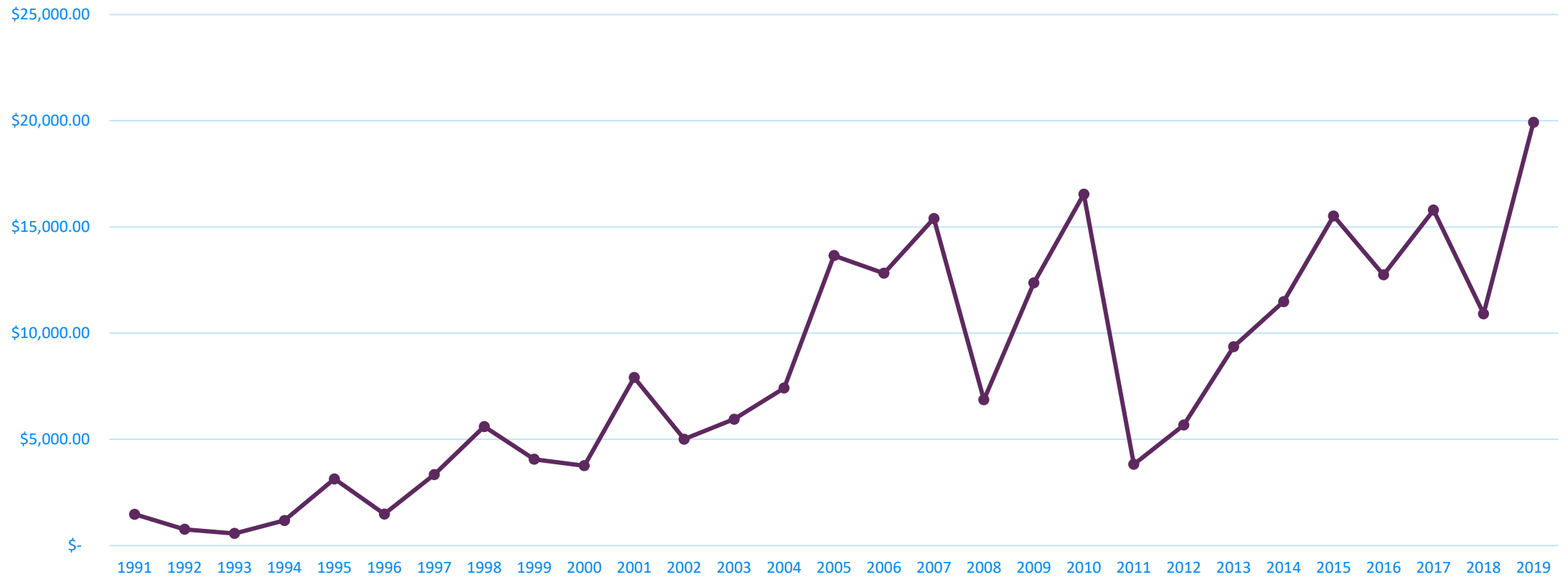
Excavation Cost

Excavation



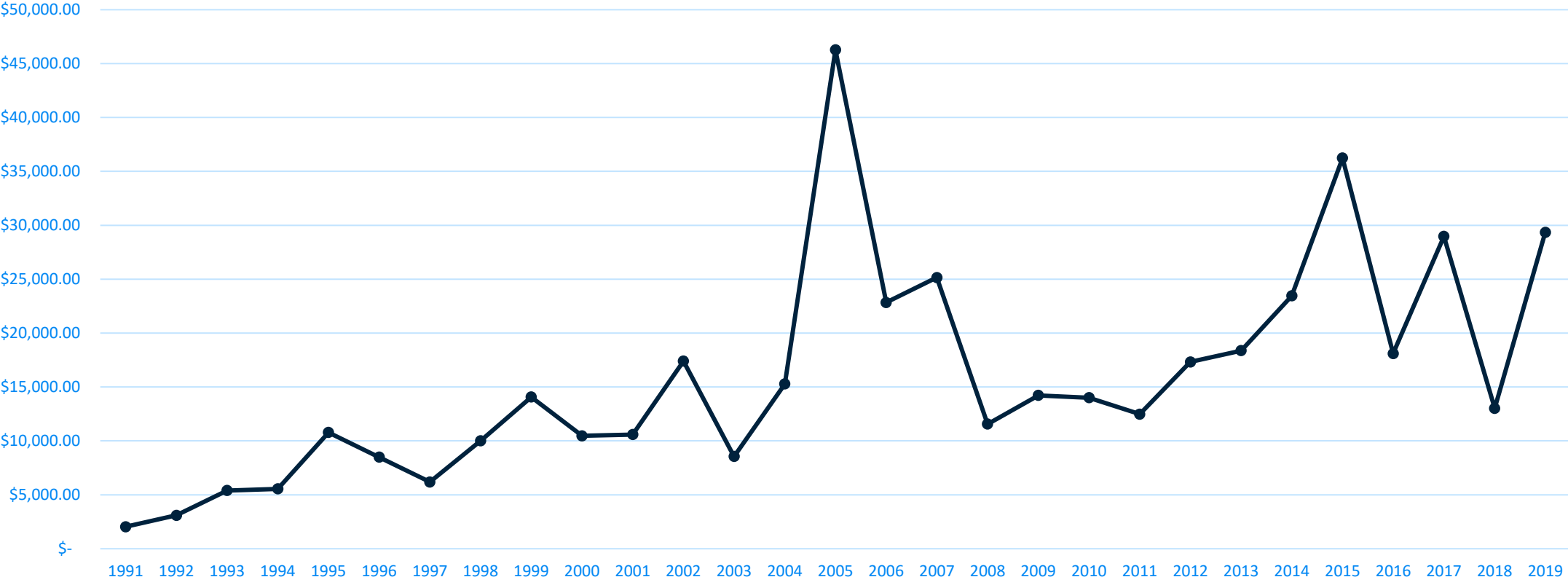
Trucking Cost

Trucking



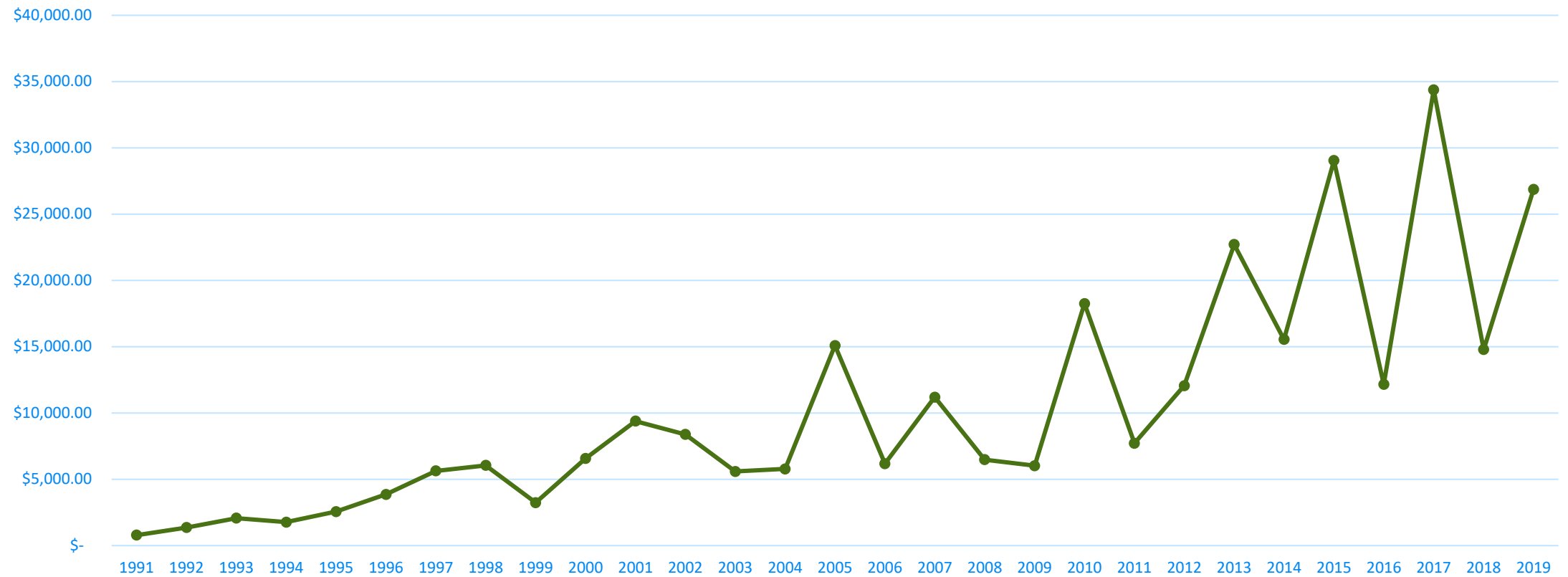
Land Application and Disposal Cost

Land Application and Disposal



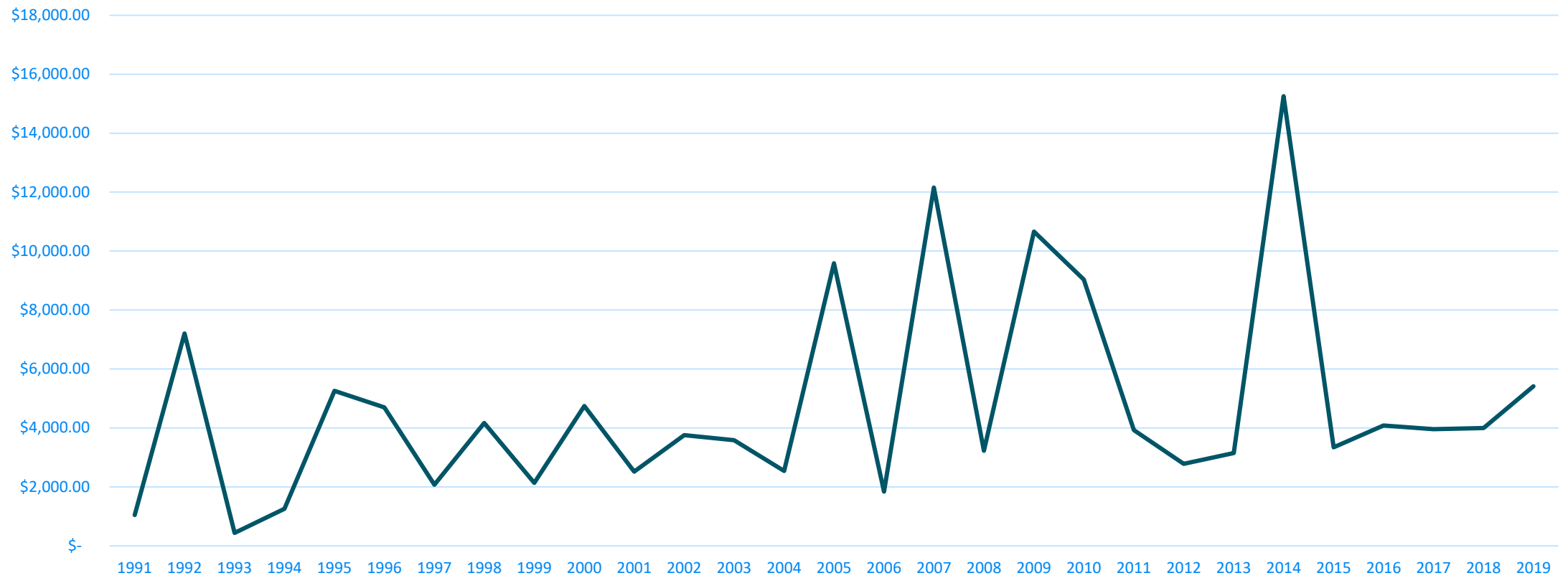
Backfill Cost

Backfill

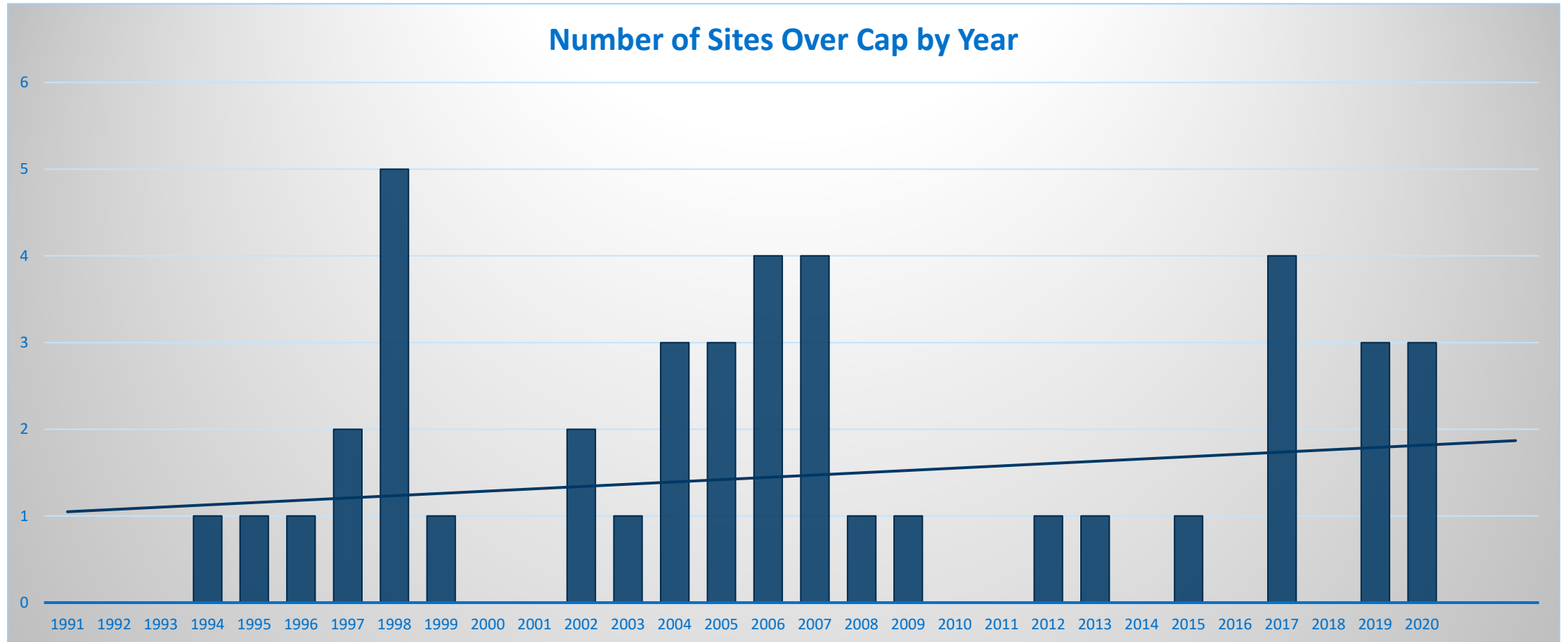


Other Cost

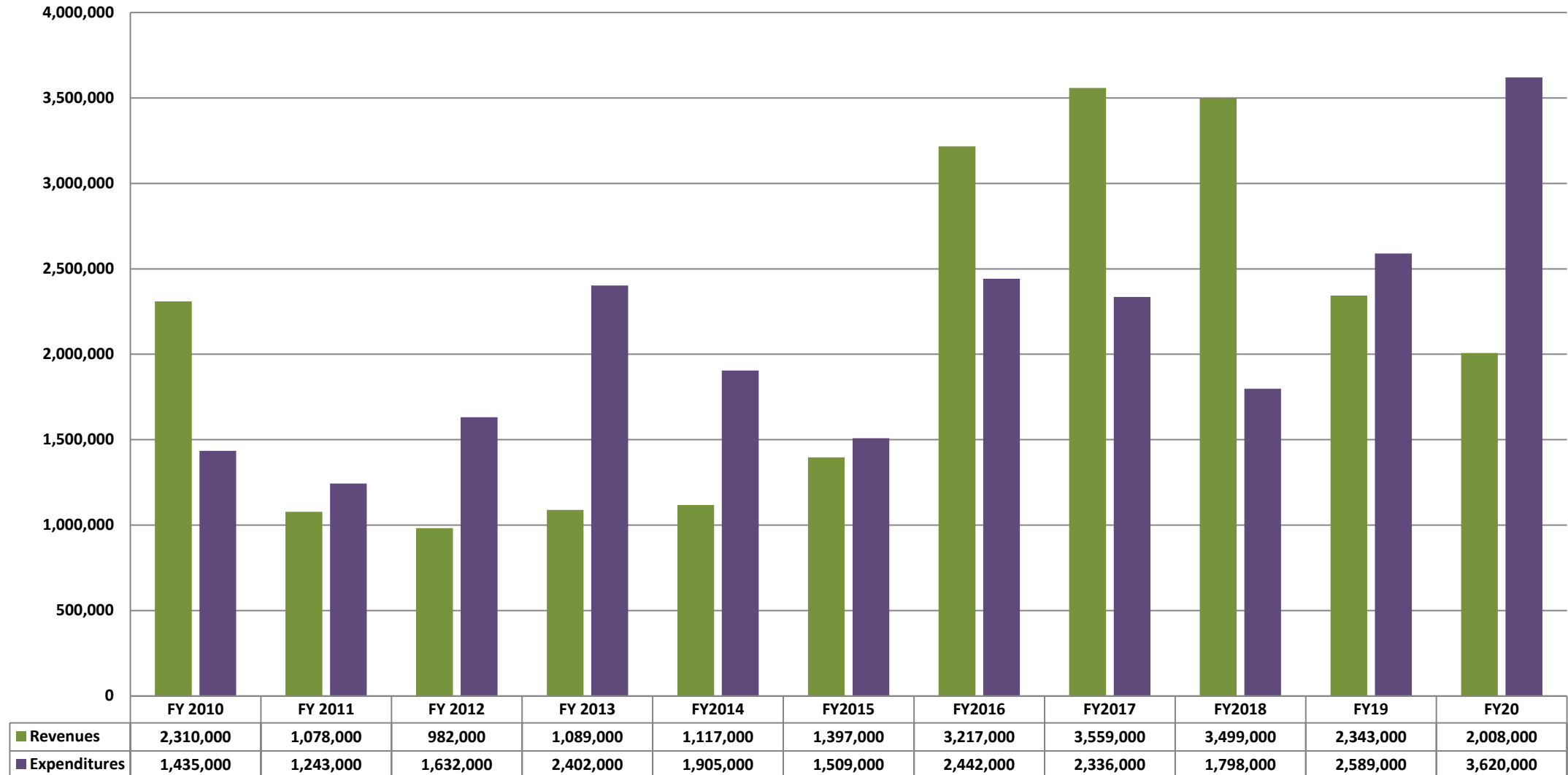
Other



Number of Sites Over Cap by Year



ACRRA Expenditures and Revenues



Current Fee Structure

Type of License	Current Surcharge	New Surcharge as of 1/1/2022
Commercial & Non-Commercial Pesticide Licenses	\$14	\$25
Structural Pest Control Company Licenses	\$55	\$100
Fertilizer Licenses	\$28	\$50
Pesticide Dealer License (Ag & Non-Ag)	\$41	\$75
Fertilizer Tonnage	\$0.17/ton	\$0.32/ton
Pesticide Registration (percent of sales)	0.17%	0.32%
Out-of-State Pesticides Distributors (each site-annually)	\$1,650	\$3,135

Fees as represented on a per acre cost with the new surcharges as of 1/1/2022

Crop	Fertilizer Cost for farmers using fertilizer	Fertilizer pounds per acre on average	Cost per acre of the ACRRR surcharge for fertilizer tonnage	Pesticide Cost farmers using pesticides	Cost per acre of the ACRRR surcharge for pesticide percent of gross sales
Corn	\$119.50	453	7.4 cents	\$31.53	10.1 cents
Soybeans	\$30.65	67	1 cent	\$40.00	12.9 cents
Wheat	\$87.49	275	4.4 cents	\$30.00	9.7 cents
Alfalfa	\$59.88	125	1.9 cents	\$11.00	3.4 cents
Sugar Beets	\$87.36	368	5.9 cents	\$113.07	36.5 cents
Oats	\$46.87	112	1.9 cents	\$15.54	4.9 cents

Fertilizer and pesticide costs for the 2019 crop year, University of Minnesota FINBIN data.

Fertilizer pounds per acre were based on 2017 data, the last year that we have available for fertilizer sales in Minnesota. USDA NASS census was a basis for the data and compared to MDA fertilizer data, NASS survey data for fertilizer applied per crop and USDA NASS survey data.

Percent Revenue by Type FY21

Fund	Account	Account Descrtion	Sub Account	FY21	%
2018	512001	ITC Interest Earnings		\$16,897	1%
2018	600339	ACRRA License Surcharge	3310	\$242,105	11%
2018	600339	ACRRA-Fertilizer Tonnage Surcharge	3320	\$715,778	33%
2018	600339	ACRRA-Pesticide Gross Sale Surcharge	3321	\$1,179,975	55%
				\$2,154,755	

Maximum Reimbursement Adjusted for Inflation

Maximum Reimbursement	Year	Consumer Price Index Buying Power as of 8/1/2021
\$200,000	1998	\$338,573
\$350,000	2000	\$567,230

About the CPI Inflation Calculator

The CPI inflation calculator uses the [Consumer Price Index](#) for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted. [This data](#) represents changes in the prices of all goods and services purchased for consumption by urban households.

U.S. Bureau of Labor Statistics

https://www.bls.gov/data/inflation_calculator.htm

Other Potential Statutory Changes Needed:

- Alternative sources of drinking water as an eligible expense
- Minimum and Maximum account balance (\$1 Million - \$5 Million)
- Recontamination extending beyond 5 years
- Clarifying the discovery of an incident that may have not occurred prior to July 1, 1989
- Should the immediately reporting be an “all or nothing” eligibility requirement
- Completed applications must be submitted at least 60 days prior to a meeting
- Board staff and other administrative costs and the commissioner's incident response program costs related to eligible incident sites, up to \$450,000 per fiscal year (last update 2009)

Public Comments

MDA needs stakeholder input on the amount of the ACRRA cap

-Virtual stakeholder meetings are being held by the MDA on Sept 30, Oct 20 and Nov 3

-Please provide input on the following questions:

What concerns do you have with the current ACRRA cap?

What do you think the ACRRA cap should be and why?

What other concerns do you have with the ACRRA program?

Public Comments

If you would like to submit a written response,
please email it to Jennie Andryski at
Jennie.Andryski@state.mn.us

Thank you!

Roger Mackedanz

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