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**A Performance Audit of the
Petroleum Storage Tank Trust Fund**

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Digest of A Performance Audit of the Petroleum Storage Tank Trust Fund

Chapter I: Introduction

The Petroleum Storage Tank Trust Fund (PST Fund or fund), created in 1989, provides coverage to underground fuel storage tank owners and operators (such as gas stations) for cleanup costs associated with a leaking tank and any third-party liability costs. The fund is administered by the Division of Environmental Response and Remediation (division) located within the Department of Environmental Quality. Currently about 3,170 (or 81 percent) of the certified underground fuel storage tanks in Utah have the PST Fund as their federally required financial assurance mechanism. PST Section cases are managed by one environmental program manager and six project managers with a caseload of about 40 to 50 cases each.

The Federal Environmental Protection Agency (EPA) requires all underground petroleum tank owner/operators to have \$1 million of financial assurance in place in the event of a leak. Utah's fund, which tank owners/operators participate in voluntarily, provides the mechanism so tank owners/operators can meet the federal requirement. Both the federal underground fuel storage program and Utah's program have evolved since their inceptions. Utah's PST Fund is currently funded mainly through a surcharge of \$0.005 (one-half cent) per gallon of gas purchased by the tank owners/operators. If a tank owner/operators chooses not to participate in the fund, they may receive a refund from the Utah Tax Commission.

The scope of our audit was to review the following areas:

- Whether the division should both administer the fund and regulate the industry
- Whether the fund should be privatized
- Whether alternative tank cleanup corrective action methods can be used to meet a tank owner/operator's financial assurance requirements

**Chapter II: Specific
Audit Questions
Do Not Raise
Significant
Concerns**

- Whether the division is acting in an effective, efficient, and timely manner in auditing corrective actions and regulating the industry generally

Chapter II discusses privatization of the fund, financial assurance requirements, and the fund's separation of duties. Chapter III discusses the need for performance measures and provides an analysis of the fund's soundness.

No Compelling Need to Privatize the PST Fund. Our review of the issue of privatization revealed no compelling reason for Utah to privatize the PST Fund at this time, although we do address some management improvement issues for the fund in Chapter III. Our examination included a review of the Utah's Privatization Policy Board's (PPB) actions concerning PST privatization. Also, we found that 34 states maintain a state fund system like Utah's. In general, most state programs require one of two main methods of financial assurance: a state fund program like Utah's, or the use of a private insurance policy. A third option, where a private entity takes over for the state fund, is used in only one state. For this complete privatization to be accomplished, the petroleum marketers and retailers would have to support and operate the fund, but the Utah Petroleum Marketers and Retailers Association (UPMRA) currently does not support privatization.

Utah Follows Federal Standards on Financial Assurance Mechanisms. The second specific audit question was whether the division should allow the EPA requirement of having a financial mechanism in place to be met through the use of nonfinancial means, such as a remediation system that would signal when a leak occurs. We found no criteria, under either federal or state law, allowing the use of nonfinancial methods. Allowable mechanisms for financial responsibility include, but are not limited to, self-insurance (requiring a net-worth test), private insurance, surety bonds, letters of credit, trust funds and state assurance funds. But, as mentioned, 81 percent of the tanks have the PST Fund as their federally-required financial assurance mechanism.

Division Minimizes Risks of Combining Duties of Fund Administration and LUST Regulation. The third audit area was for us to evaluate the risks associated with the division, even the department, having the responsibility of both managing the fund and cleanup. Although there is an inherent risk in having project managers regulate the

cleanup of releases through both overseeing consultant activities and administering the fund through voucher reimbursement, several layers of protection have been built in to minimize the risk of project managers overstepping their authority. We found that many of the costs eligible for reimbursement are set by statute and cannot be changed by the project manager. Also, by providing for multiple levels of review in both workplan review and voucher reimbursement, the division attempts to ensure that no one person or group has complete control of both processes. Finally, the division is regularly audited by an outside entity—the State Auditor’s Office. We looked at some of the surrounding states and found they vary in how they manage these duties.

Clarification Needed Whether PST Project Managers Are Permitted to Write Workplans. In the final audit question, we responded to concerns about project managers both writing and approving workplans. There is some confusion about whether PST project managers are currently allowed to write basic workplans. Division management needs to make their position clear to all employees. There are specific cases where it appears the project managers are statutorily allowed to write workplans. According to the division’s legal counsel, project managers can write workplans as long as the owner/operator has had an opportunity to have input into the actions to be taken. Still, in most cases, it is the norm for the workplan to be written by the consultant.

**Chapter II
Recommendation**

1. We recommend the division clarify with both staff and certified consultants when it is permissible for project managers to write workplans.

**Chapter III:
Additional
Performance
Measures Needed**

More Current Information Supplements Outside Reviews of the Fund. Both Deloitte Consulting LLP (actuary)—a private consultant hired by Utah’s Division of Risk Management—and the EPA evaluate the PST Fund annually. While we agree with some of the most recent report conclusions, this section provides additional analysis to be considered. The actuary projects a growing negative equity balance. However, while these concerns are valid, the actual numbers provide a more positive outlook than the actuarial projections. In addition, the EPA believes Utah’s PST Fund is sufficiently funded, which we believe is supported by recent revenue increases and cost-cutting measures. Finally, in an attempt to compare other states’ programs with Utah’s, we found a new EPA fund

soundness tool—which is designed to evaluate state programs—is still in the preliminary stages, and is not sufficient to give a substantive conclusion.

Division-Generated Performance Measures Needed to Complete Program Evaluation. We believe the division needs additional performance measures to assist in program evaluation as well as to provide more valuable feedback to the EPA and the actuary regarding the cases that make up the PST program. The PST Section management should review performance measures for case closure. Also, performance measures are needed to examine the aging of the cases. Finally, the PST Section should accurately track performance numbers they provide to the EPA.

Chapter III Recommendations

1. We recommend the division develop performance measures to analyze PST Fund cases for possible closure and gain a more developed understanding of their caseload as it relates to the soundness of the fund.
2. We recommend the division develop performance measures focusing on aging PST Fund caseloads and individual project manager performance to ensure cases are being efficiently managed.
3. We recommend the division accurately track and document the number of start-up remediation systems they observe each year and the number of leaking tank sites they visit annually with a goal to provide data to the EPA that accurately reflects Utah's program.

Chapter I

Introduction

The Petroleum Storage Tank Trust Fund (PST Fund or fund) was created by the Utah Legislature in 1989 for the mitigation of underground fuel storage tank releases. As set forth in *Utah Code* 19-6-409, the fund provides coverage to underground fuel storage tank owners and operators (such as gas stations) for the cleanup costs associated with a leaking tank and any third-party liability costs. The Federal Environmental Protection Agency (EPA) requires all underground petroleum tank owner/operators to have financial assurance in place in the event of a leak. Utah's fund program provides such a mechanism for tank owner/operators.

Although tank owner/operators are required by the EPA to have some form of financial assurance in place in the event of a leak, using Utah's fund as that mechanism is voluntary. Currently about 3,170 (or 81 percent) of the certified underground fuel storage tanks in Utah have the PST Fund as their federally required financial assurance mechanism. PST Section cases are managed by one environmental program manager and six project managers (who are environmental scientists and engineers). Project managers have a caseload of 40 to 50 cases each.

The PST Fund is administered by the Department of Environmental Quality's PST Section, located within the Division of Environmental Response and Remediation (the division). The division also houses the Underground Storage Tank (UST) Section and the Leaking Underground Storage Tank (LUST) Section. UST is the compliance section of the program, overseeing the regulation of the underground fuel storage industry. The UST staff "perform[s] compliance inspections, issue compliance notices, and serve as expert witnesses at administrative hearings," as well as other duties. Finally, LUST handles the remediation of leaking sites when responsible property or tank owner/operators are not available or are unable to pay for the remediation of a LUST site.

Utah's voluntary PST Fund fulfills the federal requirement for tank owners to have financial assurance.

81 percent of Utah's certified underground fuel storage tanks use the PST Fund for financial assurance.

EPA Requires Financial Assurance Of Owners and Operators

All UST owner/operators are required by the EPA to demonstrate that they are able to pay for any damages incurred in the event of a leak. This entails a financial mechanism demonstrating \$1 million available for cleanup actions. Acceptable financial mechanisms include, but are not limited to: private insurance, self-insurance, letters of credit, trust funds, or a state financial assurance fund. In general, and for the majority of tank owner/operators, any combination of these must equal \$1 million. A smaller group of private tank owner/operators, with an average monthly amount of gasoline dispensed of 10,000 gallons of fuel or less, are only required to demonstrate \$500,000 of financial assurance.

Other acceptable financial assurance mechanisms include self-insurance, letters of credit, and private insurance.

According to an EPA study, federal requirements were developed in the 1980s as a result of “hundreds of thousands of underground storage tanks leaking petroleum . . . contaminating community drinking water supplies.” With so many releases, over 2 million tanks at the inception of the federal program, the EPA eventually designed a program to be implemented by states. Figure 1.1 discusses the timeline of federal requirements.

Figure 1.1 Federal Underground Storage Tank Requirements Have Evolved Through the Years. National rules and regulations have been refined since their inception in 1984.

1984	National underground storage tank program is created, requiring EPA to develop a comprehensive regulatory program for underground storage tanks (UST) storing petroleum.
1985	EPA forms the Office of Underground Storage Tanks.
1986	Congress creates the Leaking Underground Storage Tank Trust Fund to: 1) oversee cleanups, and 2) pay for cleanups when the owner/operator is unknown. Congress also adds a requirement of a financial assurance mechanism in the event of a release.
1988	EPA publishes the final underground storage tank regulations. These include the \$1 million financial assurance requirement, as well as a tank upgrade requirement.
1989	Deadline for owner/operators to demonstrate financial assurance.
1998	Final deadline for owner/operators to close, upgrade or replace tanks.
2005	Congress creates the Underground Storage Tank Compliance Act of 2005 to further prevent leaks. Among other things, this requires double-walled systems or further financial assurance.
2007	Deadline for states to require either financial assurance for installers and manufacturers of tanks and piping or double-walled systems.

A national underground storage tank program has existed since 1984.

The federal requirements for underground storage tank owner/operators have tightened as the years have gone by. Because of the structure of the program, state interaction is vital. The state is responsible for observing that owner/operators meet all of these requirements. In Utah, the state has also elected to have a voluntary state financial assurance fund program.

Utah Provides a Financial Assurance Mechanism for Owners and Operators

In order to assist the owner/operators in meeting the financial assurance requirement of the EPA, Utah’s Legislature has created the Petroleum Storage Tank Trust Fund. This fund provides \$1 million for cleanup on eligible tank releases, after the owner has met specific

Utah's PST Fund was created in 1989. The Legislature approved a surcharge to fund the program in 1990.

obligations. Like the federal program, Utah's program has evolved through the years.

Operation of the PST Fund Has Evolved

Since its creation in 1989, the PST Fund has changed in response to State Legislature and EPA requirements. Figure 1.2 demonstrates some of these changes.

Figure 1.2 Legislation and Other Requirements Have Changed the PST Fund. Rules and regulations have been refined since the fund was created in 1989.

1989	Utah's PST Fund is created within the Division of Environmental Response and Remediation.
1990	Utah's program is approved by the EPA.
1990	Utah Legislature approves surcharge of ½ cent per gallon (or \$0.005) to fund the program.
1994	The deductible required of owner/operators is reduced from \$25,000 to \$10,000.
1997	The Legislature changes the fund from mandatory for all owner/operators to voluntary.
1998	The environmental assurance fee is reduced from ½ cent per gallon to ¼ cent per gallon.
1999	A limit of \$40 million is set on maximum fund balance. If balances exceed this, the petroleum surcharge is eliminated until the fund is below \$30 million.
2003	The limit of \$40 million is reduced to \$20 million. The environmental assurance fee is increased from ¼ cent per gallon to ½ cent per gallon.
2006	The Legislature requires that if an owner/operator uses the fund as financial assurance for any of his/her tanks, then all the owner/operator's tanks must be on the fund.
2008	Utah's law will need to be changed to match federal law requiring double-walled systems.

The fund's evolution has attempted to refine the processes in order to maintain fund soundness while not overburdening owner/operators.

Utah's PST Fund, plus a \$10,000 owner-paid deductible, provides the full \$1 million coverage required by the EPA.

Among other requirements, a tank owner must pay an annual tank fee plus a surcharge of \$.005 (½ cent) per gallon of gas purchased to be eligible on the fund.

The PST Fund Operates Similar to an Insurance Program

For eligible tanks, the PST Fund generally provides up to \$1 million of financial assurance in the event of a tank release. If owners choose to participate in the fund, they are responsible for the first \$10,000 of the cleanup, like a deductible, and then the fund will cover the remaining \$990,000.

Utah Code 19-6-411 sets forth the fees an owner/operator must pay in order to be eligible for the fund:

- An annual tank fee of \$50 or \$150, based on throughput
- A petroleum surcharge of \$0.005 (one-half cent) per gallon of petroleum products purchased.

The petroleum surcharge fee is collected by the Utah Tax Commission and distributed to the division for the operation of the PST Fund. If an owner has chosen to use another financial assurance mechanism, he or she can receive a refund from the Tax Commission for the petroleum surcharge fees paid. If an owner chooses not to participate in the fund, he or she must provide evidence of an alternate financial assurance mechanism to the division.

When a leak is discovered, either by the owner/operator of the tank, the division during an inspection or at another time, or any other source, the owner/operator must report any release and/or abatement action to the division within 24 hours. The UST Section of the division, determines whether the tank is eligible for fund reimbursement. Eligibility is determined by owner participation in the fund at the time of the release, compliance with federal and state regulations and other requirements.

If the release is found to be covered by the PST Fund, the site is assigned to a PST Section project manager, who sends the owner a letter requesting an investigation and possibly a Corrective Action Plan (CAP) for cleanup. Sometimes an investigation will prove the contamination does not exceed federal and state acceptable contamination limits. If a CAP is needed because contamination limits have been exceeded, it is written by a division-certified consultant of the owner's choice. The CAP

(which details the tasks needed to remedy or remediate the leak) is negotiated by the project manager, the claimant, and their consultant.

Once the CAP has been agreed on, workplans, or individual steps in the CAP, are submitted by the consultant and negotiated for approval, mainly by the project manager. This process is discussed further in Chapter II. Once the workplan is approved, cleanup work starts. During the cleanup process, reimbursement vouchers are sent in by the consultant, reviewed, approved, and paid or disapproved by the division. PST Fund cleanup continues until federal and state acceptable contamination levels are reached or until the PST Fund limit of \$1 million has been reached, after which it is the owner/operator's responsibility to fund the remainder of the cleanup. This process is also discussed in Chapter III.

Audit Scope and Objectives

We were asked to audit the operations of the Petroleum Storage Tank Trust Fund within the Division of Environmental Response and Remediation. The scope of our audit was to review the following areas:

- Whether the division should both administer the fund and regulate the industry
- Whether the fund should be privatized
- Whether alternative tank cleanup corrective action methods can be used to meet a tank owner/operator's financial assurance requirements
- Whether the division is acting in an effective, efficient, and timely manner in auditing corrective actions and regulating the industry generally

Chapter II discusses privatization of the fund, financial assurance requirements, and the fund's separation of duties.

Chapter III discusses the need for performance measures and provides an analysis of the fund's soundness.

This audit addresses some specific questions about the PST Fund, as well as more general efficiency and effectiveness questions about the division.

Chapter II

Specific Audit Questions Do Not Raise Significant Concerns

We were asked to respond to four specific but loosely related questions regarding the Division of Environmental Response and Remediation (division) and Utah's Petroleum Storage Tanks (PSTs). On the whole, we found that answers to the audit questions cause no significant concerns. Specifically we conclude:

- There is no compelling need to privatize the PST Fund (or fund). Further, Utah's PST Fund does not differ from most other states' programs.
- Utah follows existing federal law with regards to whether alternative tank cleanup corrective action methods can be used to meet a tank owner/operator's financial assurance requirements.
- Despite inherent risks, the division appears to minimize risks associated with project managers both administering the fund and regulating the cleanup of PST release sites.
- The division has rectified one outstanding error regarding when project managers are allowed to write workplans for leaking PSTs. However, further clarification is still needed.

The remainder of this chapter is our review of these four specific audit questions.

No Compelling Need to Privatize the PST Fund

Our review of the issue of privatization revealed no compelling reason for Utah to privatize the PST Fund at this time. However, we do address some management improvement issues for the fund in Chapter III. Our examination included a review of the Utah Privatization Policy Board's (PPB) actions concerning PST privatization. Also, we found that 34 states maintain a state fund system like Utah's. In Utah's program, the

While improvements can be made to the PST Fund, there is no compelling reason to privatize the fund at this time.

tank owner or operator pays a petroleum surcharge, which is then transferred into the PST Fund. The fund then pays cleanup costs for leaks of up to \$1 million, minus a \$10,000 deductible. In general, most state programs require one of two main methods of financial assurance: a state fund program like Utah's, or the use of a private insurance policy. A third option, where a private entity takes over for the state fund, is used in only one state.

Most states require one of two types of financial assurance: a state fund (such as Utah's) or private insurance.

In addition, we have been told that the use of private insurance may have limitations, particularly for rural owner/operators. For complete privatization to be accomplished, the petroleum marketers and retailers would have to support and operate the fund, but the Utah Petroleum Marketers and Retailers Association (UPMRA) currently does not support privatization. The determination to privatize the fund remains a policy issue for the Legislature to decide whether it wishes the state to continue operating the fund.

The Policy Privatization Board Determined Internal DEQ Boards Could Study Privatization

As mentioned in the audit request, this public policy issue of privatizing the fund was reviewed by the PPB after a request made at the July 2005 meeting of the Natural Resources, Agriculture, and Environment Interim Committee. One of the PPB's duties, as described in *Utah Code* 63-55a-3, is to "review whether or not certain services performed by existing state agencies could be privatized to provide the same types and quality of services that would result in cost savings."

Utah's Policy Privatization Board reviews state services to determine if privatization of a specific service is more desirable.

The PPB heard reports from several interested parties, including the division, UPMRA, and other involved citizens. The division reported that it "does not feel that the management of the fund is appropriate for privatization at this time." The PPB determined:

Since DEQ has both an advisory and regulatory board involved reviewing and monitoring the advisability of privatizing the management of the fund, that at this point it doesn't appear that further study or action is needed by the Privatization Policy Board on this issue.

It was reported to the Underground Storage Tank Advisory Task Force at the meeting following the PPB's conclusion that "The

Privatization Board concluded that it was not appropriate for the PST Fund to become privatized at this time, and referred the issue back to the Task Force.” Since the conclusion by the PPB, there has been no further action on the part of the division’s advisory or regulatory boards.

Most States Have State-Operated Funds

Most states use one of two methods to help owners and operators fulfill the EPA requirement of financial assurance mechanisms, as discussed in Chapter I. The first method, used by a majority of states, is a state fund program like Utah’s. The second system requires owners/operators to maintain a private insurance policy. Figure 2.1 shows the breakdown of how states deal with underground fuel storage funds or programs.

68 percent of the states have a state-operated fund.

Figure 2.1 Sixty-Eight Percent of States Run a State Fund. States range from offering a comprehensive state fund to offering no program at all.

Level of Privatization	Number of States	Percentage
State-Operated Fund (Utah Included)	34	68%
Private Insurance Required	10	20
Fully Privatized	1	2
Loan Program	1	2
No State Program*	4	8
Total	50	100%

* The EPA manages the underground fuel storage program for four states.

The states that operate a state financial assurance fund function in the same basic way as Utah, with some differences in funding amounts. Figure 2.2 shows some of the differences between the states.

Figure 2.2 Differences Exist Within the 34 State Fund Programs.

Deductible Amounts	Number of States
Less than \$10,000	12
\$10,000*	8
Greater than \$10,000	14
Annual Fee**	Amount
Average*	\$ 95
Utah	150
Petroleum Surcharge Fee (Per Gallon)	Number of States
Less than \$0.005	9
\$0.005*	4
Greater than \$0.005	21

* Includes Utah.

** Some states (including Utah) have multiple possible annual fees. This represents the highest possible fee.

Compared to the other 33 states that operate their own funds, it appears that Utah is fairly average with deductible amounts and the surcharge fee. However, Utah is above the average for the annual fee required for the fund.

Ten States Require Private Insurance. As of 2006, there were 10 states either requiring owners/operators to get their own insurance policies from a private company, or transitioning to private insurance from a state fund. However, even after full transition to private insurance, these states cannot completely relinquish responsibility. Cleanup on sites discovered before the transition would still be paid by the fund. In addition, the Utah's state program, as it exists, would still be required to monitor tank compliance with EPA regulations.

The transition process itself varies. Some states set a definite date, after which they would provide no financial assurance mechanism. Some states gradually offer less financial assurance until they ease out altogether. One state, Washington, has a reinsurance system in which they reimburse insurance companies for any cleanup costs over \$75,000.

Utah's program operates within the norm of most states' programs for deductible and surcharge fees, but is above the average for annual fees.

Even if Utah did not have a state fund, it would still have to regulate the industry.

We were told that high premium costs may be a deterrent for small tank owners to obtain private insurance.

Private insurance information is primarily proprietary, making it difficult to obtain. Because of this, we were not able to review specific availability of private insurance in Utah. However, we do know that about 81 percent of the certified tanks in Utah use the PST Fund as their financial assurance mechanism. Of the remaining 19 percent, about 30 percent have private insurance policies, while the others use self-insurance or another mechanism. A presumption could be made that if private insurance were more economical for owner/operators, a higher number would have private insurance policies as opposed to using the state fund.

While private insurance is an option open to owner/operators, we have heard from the division, as well as from the executive of UPMRA, that high premium costs could be an obstacle for small, rural tank owner/operators. The UPMRA executive said that many of his members are small owners with only one or two tanks, and they would be priced out of the market if the state required private insurance.

The division also expressed concern that a private insurance company could deny a claim, leaving the owner/operator responsible for covering a potentially very expensive cleanup. Verification of this claim by the division was difficult due to the inability to access proprietary data.

Full-Fund Privatization Has Been Rejected by the Marketers and Retailers Association. The executive of UPMRA stated that his organization is not interested in privatization at this time. Complete privatization of the fund involves marketers and retailers or some other private entity taking responsibility for administering the fund and monitoring compliance.

Currently, only one state, Iowa, is fully privatized. Their system operates such that owners and operators not only have responsibility for the fund but also monitor compliance with state oversight. The Iowa fund, called The Petroleum Marketers Management Insurance Company (PMMIC), inspects all sites on their fund, and if the tank is not in compliance with the standards, they are refused coverage.

According to the administrator of this system, this shift to complete privatization was anticipated by all concerned parties at the inception of the state-run program in 1989. This allowed Iowa to set up their state program to allow for greater ease in transition. In 2000, the marketers decided they were prepared to take over the program, and it shifted from

Unless a private entity decides they would like to develop a private program, full privatization does not seem feasible for Utah at this time.

being a state program, like Utah’s, to being run by the marketers and retailers.

The only way for this system to be successful is for a private group, most likely petroleum marketers and/or retailers, to become interested in running the system and then take responsibility for it. In a meeting of the Policy Privatization Board, UPMRA said they do not support privatization of the fund. In a follow-up conversation, the executive of UPMRA said that his organization studied Iowa’s system, and it does not seem feasible for them at this time, nor is it worth the liability. Unless a private entity decides they would like to develop a private program, full privatization does not seem feasible for Utah at this time.

Utah Follows Federal Standards on Financial Assurance Mechanisms

The second specific audit question was whether the division should allow the EPA requirement of having a financial mechanism in place, in the event of a leak, to be met through the use of nonfinancial mechanisms. We found no criteria, under either federal or state law, allowing the use of nonfinancial methods.

Utah follows federal law on what constitutes a financial assurance mechanism. The *Code of Federal Regulations* requires each tank owner to demonstrate financial responsibility to cleanup the contamination from a tank leak and any third-party liability up to \$1 million. *Utah Code* 19-6-410.5 states that Utah’s Environmental Assurance Program “shall provide . . . assistance with satisfying the financial responsibility requirements of 40 CFR, Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund.”

Allowable mechanisms for financial responsibility include, but are not limited to, self-insurance (requiring a net-worth test), private insurance, surety bonds, letters of credit, trust funds and state assurance funds. Utah’s PST Fund will pay up to \$990,000 per release as the owner or operator of the tank is responsible for a \$10,000 deductible—bringing the level of coverage to \$1 million. An alternative tank cleanup method could be a type of system, such as a leak detection mechanism, installed on a tank that would signify when a release occurs.

Federal code requires tank owners to demonstrate financial responsibility to pay for cleanup costs related to tank leaks up to \$1 million.

We found no criteria allowing the use of systems which would replace the federally required financial assurance mechanism. The EPA recently re-emphasized this position in a letter to the division.

We were unable to find any EPA official or state program that allows replacement of the financial requirement with a remediation system. The EPA states that the financial responsibility regulations are designed to ensure that if there is a leak or spill, the owner/operator will have the resources to pay for costs to clean it up and compensate third parties. According to the EPA, when the federal program was created in 1986, Congress wanted owner/operators of underground storage tanks to have financial resources to pay for cleanups.

We reviewed a letter from the EPA to the division, discussing that one Utah company has proposed the use of their leak detection product as an alternative financial responsibility mechanism. In response, the EPA representative stated:

I don't see any way this product could qualify as a financial responsibility mechanism under EPA's financial responsibility regulations in 40 CFR Part 280, Subpart H, the state program approval regulations in 40 CFR Part 281, or section 9003(d) of the Solid Waste Disposal Act. This product simply does not meet any of the statutory/regulatory requirements for a financial responsibility mechanism. . . . All systems fail sometimes (regardless of how good they are), and financial responsibility is essential to ensure human health and the environment are protected, and to ensure third parties are compensated for damages. Regardless of how good this particular technology is, it will not satisfy either the intent or the letter of the statute/regulations.

The intent of having a financial assurance mechanism is to pay for cleanup and liability costs in the event of a leak.

In addition, The Association of State and Territorial Solid Waste Management Officials states in their 2002 publication, *Information for Evaluating UST Financial Responsibility Options*, that the EPA requires a "mechanism . . . that will provide monies that are adequate, reliable and immediately available to pay cleanup costs and third party damages." Based on this combined evidence, we do not believe a leak detection system could replace a financial assurance mechanism, as it is currently envisioned.

Division Minimizes Risks of Combining Duties of Fund Administration and LUST Regulation

The third audit area was for us to evaluate the risks associated with the division, even the department, having the responsibility of both managing the fund and cleanup. Although there is an inherent risk of a conflict of interests in having project managers regulate the cleanup of releases through both overseeing consultant activities and administering the fund through voucher reimbursement, several layers of protection have been built in to minimize the risk of project managers overstepping their authority. Many of the costs eligible for reimbursement are set by statute and cannot be changed by the project manager. By providing for multiple levels of review in both workplan review and voucher reimbursement, the division attempts to ensure that no one person or group has complete control of both processes. The Utah State Auditor's Office also provides outside oversight of some practices. We looked at other states and found they vary in how they manage these duties. Also, although the EPA has no stated standard regarding separation of duties, they have approved the division's program as it currently exists.

The inherent risks associated with the division both administering the fund and cleaning up sites has been reduced through setting preset rates and having layers of administrative review.

Although both structures (duties combined and separated) provide benefits and risks, we believe that as long as the risks are administratively minimized, it seems more efficient to house both duties together. We believe the division's system has reasonable controls. This structure appears to be working at the division for reasons outlined in the next section.

Many Costs Eligible for Reimbursement Are Statutorily Established

Having statutorily established reimbursement amounts helps to minimize the risk associated with combining duties. Project managers do not have control over the amount that is paid for time and material, equipment and supplies, and hourly wages for specific consultants. These statutorily preset limits reduce the risk of project managers inconsistently paying consultants or negotiating different rates. The managers do have the ability to negotiate the hours worked for specific tasks, but those hour amounts are set before the consultant performs the work. We observed that if the consultant submits a claim that exceeds the agreed-upon amount it is denied unless all parties agree the work was necessary and

Having preset consultant and equipment rates helps control inconsistent reimbursements.

unanticipated. The project manager can also negotiate the method of cleanup used.

Many of the factors of the total cost for cleanups are set in statute. The reimbursement standards for time and material, as well as equipment and supplies, have been incorporated into *Administrative Rule* R311-207. The time and material standard “contains specific items that will and will not be reimbursed by the Fund.” Each year, the certified consultant “may file with the Executive Secretary . . . the hourly fees at which it bills clients in Utah for the services of its personnel.” Every year, the allowable reimbursement rates are calculated by the division, establishing the maximum hourly rate consultants can submit for reimbursement. Also in *Administrative Rule* is the equipment and supplies standard, which “contains specific rates the Fund will reimburse the responsible party or consultant for the included items.”

We believe these static amounts largely remove the ability of project managers to dictate hourly reimbursement amounts and manipulate individual claims. Thus, the preset limits help reduce the risk of a lack of separation between fund administration and cleanup oversight.

Multiple Levels of Review Also Reduce the Risk

In addition to the preset reimbursement amounts, multiple levels of review help reduce risk. The division has multiple levels of review for both cleanup monitoring (via workplans) and cost (voucher) reimbursement. File reviews conducted by the audit team showed that both of these processes appear to be working appropriately.

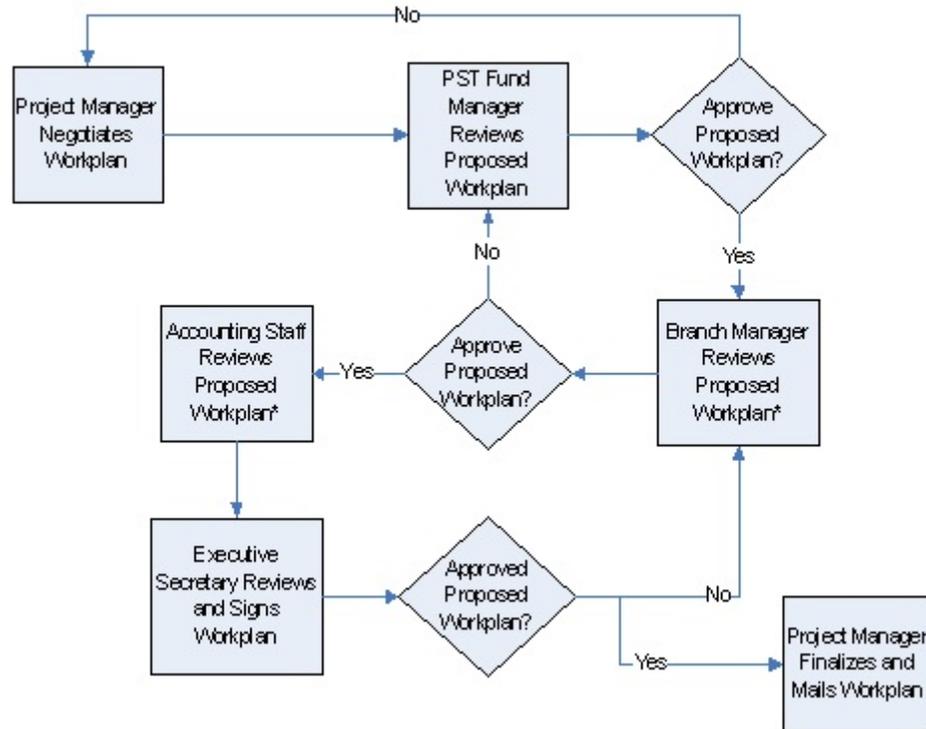
Workplans Go Through Multiple Levels of Review. Several levels of review exist to ensure that cleanup is sufficient to progress the site toward closure and meet the required work expected. A consultant prepares a Corrective Action Plan (CAP) which details the site evaluation and what he or she recommends for remediation of the contamination. Once the CAP is approved, the consultant submits workplans detailing the steps to complete each task within the CAP and the associated costs. By reviewing workplans at multiple levels, the division works to ensure that no one person has the sole decision over the extent of cleanup necessary for specific projects.

Preset hourly rates and equipment charges allowed for reimbursement are codified in Utah Code and Rules.

The division has several layers of review to ensure site cleanup is sufficient and within budget.

The process for workplan approval is multi-levelled. A workplan is reviewed in the order shown in Figure 2.3.

Figure 2.3 Flowchart of Workplan Review. If any person on this level of review disagrees with the proposed workplan, it can be sent back to the previous level for further refinement.



* These steps are at the discretion of the other reviewers.

As shown above, the workplan review process begins with the project manager, who then sends the draft to the PST Fund manager. After the fund manager, the workplan can move to the branch manager and the accounting staff at the discretion of the other reviewers. Finally, the workplan is sent to the executive secretary for review and signature, then back to the project manager to be finalized and sent out. At any point in this process, the workplan can be returned to another reviewer for changes or discussion if there are concerns.

This process provides a review of the extent and method of approved cleanup actions. It also sets the limit for how much reimbursement will later be approved. While later amendments are allowed, the objective of the workplan review is to ensure that the appropriate amount of cleanup will be required and reimbursed.

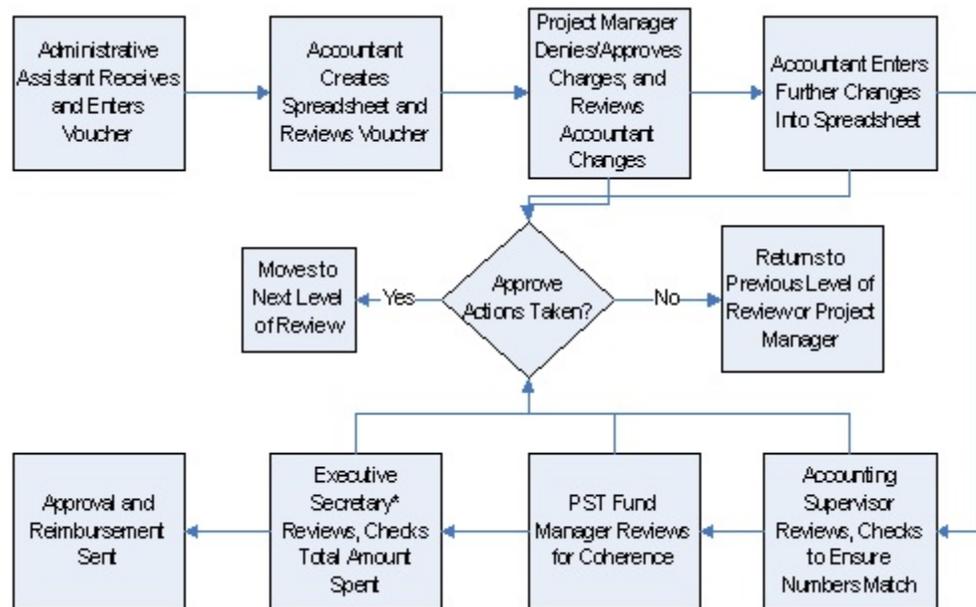
We observed workplans being reviewed, approved, and denied.

Requests for reimbursement also go through several levels of review to ensure the costs were necessary and within budget.

A File Review Showed Evidence that Workplans Were Moving Through the Review Process. As the workplans go through the review process, there is a routing slip that must be initialed at each level. A review of 20 files revealed that all of these slips were initialed by the appropriate parties. In addition, the majority of the files also showed evidence of review notes on the workplan.

Voucher Reimbursement Requests Also Go Through Multiple Levels of Review. There are also several levels of review to ensure any requested reimbursements are necessary and are within the boundaries set by the workplan and rule. After a task outlined in a workplan has been completed by a consultant, a voucher reimbursement is submitted to the division detailing the costs associated with the work performed. The voucher also includes documentation that the work was performed. The voucher requesting reimbursement then goes through the following levels of review, shown in Figure 2.4:

Figure 2.4 Flowchart of Voucher Reimbursement Review. Each level of review can disapprove charges, although not without discussion.



* The Executive Secretary is the title for the head of the division.

We observed payment vouchers being reviewed, with charges being both approved and denied.

As shown in the flowchart, the voucher is received by the administrative assistant, who enters it in the system and sends it to accounting. After going through their processes, the voucher goes to the project manager and then back to the accountant to enter changes. The voucher then goes through the supervisors of both accounting and the PST Fund. The voucher is then sent to the executive secretary for signature, and the reimbursement is sent to the claimant or consultant.

A File Review Revealed That Vouchers Are Being Reviewed.

Each voucher request for reimbursement requires the signature of most of the reviewers. A review of 24 files revealed that all but one of the vouchers we examined were signed correctly, with the only exception a case where the manager forgot to sign but acknowledges he did review the voucher.

State Auditors Provide Some Outside Oversight. Every year the Utah State Auditor’s Office examines the division. They check that the voucher amounts are reported correctly and match the files, as well as provide other basic audit functions. In addition, they review some of the actuarial information discussed in Chapter III. We believe this outside examination provides an additional control to reduce the risks associated with any conflicts of interest.

In summary, we believe these multiple levels of review, the State Auditor’s overview, and the preset amounts mentioned earlier, reduce the risk of project managers managing site remediation inconsistently and inappropriately.

Surrounding States Vary in Separation of Duties

Our review of surrounding states shows that they vary in separation of duties regarding fund administration and cleanup regulation, but that Utah is not operating outside the norm. Figure 2.5 shows how some state programs are structured.

Figure 2.5 EPA Region States Vary in Separation of Duties. Utah is not outside the norm for EPA Region 8* state operation.

State*	Responsibilities Separated or Combined
Utah	Combined
Colorado	Combined
Montana	Separated
North Dakota	Combined
South Dakota	Separated

* The EPA divides the country into 10 Regions. Utah is in Region 8, along with the states listed above including Wyoming. Wyoming was not included because its program is incomparable to other states.

Combining site cleanup and fund administration duties into one organization is not uncommon among nearby states.

Utah is comparable to other EPA Region 8 states that combine these duties within the same department. Montana and South Dakota, the two states who have separated these duties, both report problems caused by this separation. Montana reported that while it is good to have the reassurance of separation, it also causes budget problems. For example, the people in charge of approving remediation actions approve more than the fund can pay for, so reimbursement is up to six months behind. South Dakota reported problems on the opposite side, as the fund refuses to pay for so many things that sites are not being properly cleaned up. Colorado reports no complaints with its combined duties, and actually states that at one time the duties were separated but were combined in order to be able to stay current with payments.

In addition to reviewing programs in other states, we discussed this issue with an EPA representative, who said there is no recommendation concerning the separation of duties, and that the practice is nationally diverse, as is the case with Region 8. The EPA has approved Utah’s fund program as it is currently structured.

Clarification Needed Whether PST Project Managers Are Permitted to Write Workplans

In the final audit question, which came up in the course of the audit, we responded to concerns about project managers both writing and

approving workplans. The department appears to have written a very small number of workplans in relation to the total number. There is some confusion about whether PST project managers are currently allowed to write basic workplans. Division management needs to make their position clear to all employees. There are specific cases where it appears the project managers are statutorily allowed to write workplans. According to the division's legal counsel, project managers can write workplans as long as the owner/operator has had an opportunity to have input into the actions to be taken. Still, in most cases, it is the norm for the workplan to be written by the consultant.

Confusion Exists Internally About Whether Project Managers Can Write Workplans

Division management needs to make it clear when it is and is not appropriate for project managers to write workplans. Project managers cannot be consistent with consultants when there is no consistent opinion within the organization about whether it is allowed.

In the PST Section there exist differing opinions about whether project managers are allowed to write workplans. When asked, the executive secretary and branch manager both agreed that project managers are not to be writing workplans. The executive secretary acknowledged that it had been done in the past, but stated that it had been made clear to the project managers that they are not to write workplans. The disconnect appears within the PST Section—some believe it is acceptable as long as the workplans are for very routine tasks.

Statute Allows Project Managers to Write Workplans in Specific Situations

Utah Code allows the division to write corrective action plans in specific situations. This has been interpreted to include workplans. There have been concerns expressed by a consultant that project managers are writing workplans for basic cleanup activities such as semiannual groundwater monitoring. We believe a small number of workplans have been written by the PST Section, compared to the total number of workplans they review. The consultant has two concerns about project managers writing workplans. First, consultants lose money because they are normally paid \$500-\$700 for workplan development. Second, the owner/operator does not get any say in what actions are being taken.

The division needs to clarify when project managers can write workplans.

If the division doesn't follow the process set forth in Code, business owners could be denied their right to have a say in how the project is to be completed.

Utah Code requires the executive secretary to request a CAP from the owner/operator. After the CAP has been submitted, 19-6-420(8) states,

If the executive secretary disapproves the second corrective action plan [after the first has been disapproved], or if the owner or operator fails to submit a second plan within a reasonable time, the executive secretary may . . . develop his own corrective action plan.

The division acknowledges that when they prepare the workplan, the consultant does not get paid for the preparation. The division stated that saving money on the project is one of the reasons why they have written some routine workplans in the past.

The division's legal counsel said that "the critical point is whether the preparation of a work plan by a PM [project manager] deprives the owner/operator of the opportunity to have a voice in the work to be performed . . . or [the owner/operator] has not had the requisite opportunities to submit an approvable corrective action plan." The attorney is of the opinion that as long as the owner/operator has the opportunity to have a voice in what is to be done, the statutory requirement has been met. She states, "in situations where the workplan preparation is not a substantive step in reflecting the voice of the owner or operator, the requirements of Section 19-6-420 would seem to be satisfied." Based on the attorney's conclusion, the division needs to make these statutory restrictions clear to all staff, as well as consultants.

Recommendation

1. We recommend the division clarify with both staff and certified consultants when it is permissible for project managers to write workplans.

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Chapter III Additional Performance Measures Needed

To help us gauge the health of the PST program we reviewed current performance measures and believe additional measures are needed for a more complete review. We are concerned that the PST Section of the division has few existing performance measures for case management. In this chapter, we first discuss more current information to supplement outside reviews of the fund. These reviews include an annual report generated by the Risk Management hired actuary, Deloitte Consulting LLP (actuary) and the Environmental Protection Agency's (EPA) annual reviews of Utah's PST program. Second, we discuss the need for the division to generate additional performance measures to provide a look at the cases that make up the PST program. We believe that a more fully developed review of the PST program can be made once all measures are in place.

More Current Information Supplements Outside Reviews of the Fund

Both the actuary and the EPA evaluate the PST Fund annually. While we agree with some of the most recent report conclusions, this section provides additional analysis to be considered. The actuary projects a growing negative equity balance. However, the actual numbers provide a more positive outlook than the actuarial projections. In addition, the EPA believes Utah's PST Fund is sufficiently funded; we believe this position is supported by recent revenue increases and cost-cutting measures. Finally, in an attempt to compare other states' programs with Utah's, we found a new EPA fund soundness tool—which is designed to evaluate state programs—is still in the preliminary stages, and is not sufficient to give a substantive conclusion.

Actuary Projects a Growing Negative Equity Balance

In the 2006 actuarial report on the PST Fund, Deloitte Consulting LLP (actuary) states, "We estimate that the Fund is in a negative equity

Both a private actuary hired by the division and the EPA evaluate the PST Fund annually.

The actuary is concerned with the fund's negative equity balance.

The actuary projects the fund to have a negative equity balance of around \$(54) million.

position as of June 30, 2006, with a negative balance of (\$53.8 million).” The actuary goes on to address concerns about the fund’s future. Based on projections through 2016, the actuary believes the fund will continue to be in an increasingly negative equity position. However, in the 2006 report, the actuary prolongs the projection on when the fund cash balance will move into a deficient position.

The actuary defines equity balance as the cash balance of the fund as of a certain date, less the projected reserves required for insured claims that have occurred and will have notification dates (the date the leak is reported and fund coverage is triggered) on or prior to that date. In Figure 3.1, taking fiscal year 2006 as an example, the fund’s cash on hand at the time was \$9,713,548. The projected equity balance for that year of \$(53,780,112) is the result of the cleanup costs projected to close all sites with a notification date as of June 30, 2006, or about \$63.5 million less the \$9.7 million cash on hand.

Figure 3.1 Actuary’s 2006 Report’s Projected Figures Show Increasingly Negative Equity Balance.

Estimated Funds and Equity Balances		
Fiscal Year	Fund Balance	Equity Balance
2006	\$ 9,713,548	\$ (53,780,112)
2007	7,109,337	(54,049,589)
2008	5,218,964	(54,555,442)
2009	3,494,156	(55,381,960)
2010	1,745,826	(56,508,969)
2011	(24,527)	(57,942,089)
2012	(1,798,422)	(59,686,529)
2013	(3,551,198)	(61,746,737)
2014	(5,337,137)	(64,127,447)
2015	(7,206,810)	(66,834,770)
2016	(9,200,443)	(69,875,971)

Page 2 of Deloitte’s 2006 report.

Actuarial projections are based on actual numbers, unexpected events, and adjustments.

According to the actuary, PST Fund managers projected the cost to close out all cases at the time of the actuarial report to be around \$30 million (compared to the actuary’s projection of \$63.5 million). The actuary points out that project managers adjust projections on a case-by-case basis. The project managers do not project unexpected

The actuary's concern is that if all eligible claims came due the fund would be short by about \$(54) million.

events. The actuary considers the probabilities of the caseload as a whole, attempting to take into account unexpected events and adjustments affecting the caseloads.

From the data shown in Figure 3.1, the actuary concludes that “there is not enough cash in the fund at that point in time to pay for all of the claims that have notification dates prior to that date (e.g., for fiscal year 2006, prior to June 30, 2006).” This conclusion assumes that if all eligible claims came due now, at the same time, the fund would be short about \$53.7 million. The actuary recommends that “the Fund will need to reduce claim costs below our anticipated amounts and/or increase per-gallon fees over the next several years to have sufficient funds to make its required claim payments.”

We asked Utah’s Division of Risk Management how they interpret the actuarial report. Risk Management said they rely on the actuary’s analysis and do not perform their own actuarial review. Risk Management also noted that Utah does not have liability or property insurance to cover this outstanding debt. Based on the 2006 actuarial report, the Director of Risk Management made the following recommendation in a letter to the Legislature dated November 28, 2006:

I recommend and petition the Legislature to increase the environmental assurance fee on petroleum in covered tanks by $\frac{1}{4}$ cent per gallon to $\frac{3}{4}$ cent from the current $\frac{1}{2}$ cent fee. This increase would generate approximately \$2.7 million annually and should be imposed until the cash balance in the fund approaches the \$20 million limit currently in statute.

Actual Fund Numbers Provide a More Positive Outlook than the Projections

The benefit of having the passing of time is that we can review the actual numbers for 2006. These actual numbers, shown in Figure 3.2, display a more positive outlook of the fund’s future than the actuarial report discusses. Although the actual numbers are more positive, our concern with a reduction in case closures (as discussed later in this chapter) keeps us wary of the fund’s ability to meet all demands if a large number of claims comes due at the same time.

Figure 3.2 The 2005 Actuarial Report Projections for 2006 Were Readjusted Positively in the 2006 Report. The actual fund cash balance was much higher in 2006 than the 2005 report projected for 2006. Additionally, the projected negative equity balance in the 2006 report was less than in the 2005 report. Finally, the actual claims paid in 2006 were much lower than projected.

2005 Report Projecting 2006	2006 Adjustments	Percent Difference
Fund Cash Balance		
\$4.7M projected	\$9.7M actual	106%
Projected Negative Equity Balance		
\$59M	\$54M*	(9)%
Expected Claims on the Fund		
\$8.8M projected	\$4.6M actual	(48)%

* From the 2006 Actuarial Report

Figure 3.2 explains that in the 2005 actuarial report, the actuary projected the fund’s cash balance at the end of 2006 to be \$4.7 million with a negative equity balance of \$(59) million. However, according to the 2006 actuarial report, at fiscal year-end 2006, the actual cash balance was \$9.7 million with a negative equity balance projection of \$(54) million. This was a positive difference of \$5 million in both the fund balance and the projected negative equity balance.

Expected claims also differed significantly from 2005 projections to 2006 actual numbers. The 2005 report projects 2006 claim payments—the amount of claims the actuary projects consultants will bill the division for work performed—to be about \$8.8 million. However, the actual 2006 claim payments were \$4.6 million. In addition (although not in Figure 3.2), the 2006 actuarial report projects the ending cash balance for the 2007 fiscal year to be about \$7.1 million. Although fiscal year 2007 is not complete, as of March 2007, the cash balance was about \$11.7 million, according to division staff.

Actuary Believes Fund’s Cash Balance Will Be Deficient in 2011 Instead of 2008. In the 2006 actuarial report, the actuary discusses a notable change from past year’s reports. The 2006 report states, “In last

The 2006 actual fund cash balance was greater than projected, claims paid from the fund were less, and the negative equity balance shows a positive readjustment.

The actuary extended the projection of when the cash balance will be deficient.

If overall case closures continue to be low and then a greater number of claims come due simultaneously, the cash balance could fall short.

One measure the EPA is concerned with is a state program's ability to pay claims in a timely manner.

On average, the division processes claims within 27 days.

year's report, we estimated the Fund's cash balance to be in a deficient position by the end of fiscal year 2008. This year's analysis estimates the cash balance will not move into a deficit position until year 2011." Projections are just that, projections. There is no guarantee they will come to fruition. Even the actuary expects the projected numbers to be different from the actual numbers.

So, while the fund position has improved (to be discussed further), concerns still remain as to the fund's ability to meet all the demands. If overall case closures continue to be low and then a much greater number of claims come due at the same time, we are concerned the cash balance of the fund will fall short. In contrast, the EPA does not appear to have similar concerns with the fund.

EPA Believes Utah's PST Fund Is Sufficiently Funded

In their fiscal year 2006 mid year review of Utah's underground storage tank program, the EPA states that the PST Fund's cash balance indicates adequate funding for continuing cleanups of petroleum-contaminated sites. According to the EPA's 1993 publication on monitoring the financial soundness of the state assurance fund, the EPA provides the following definition of fund soundness:

A State assurance fund is financially sound if it provides reasonable assurance that funds are available to pay for the costs of corrective action and third party damages. "Reasonable assurance" would be evident, for instance, if the fund assets are greater than liabilities or there are sufficient funds to meet current demands, that is, the normal timing of payment of claims in not significantly delaying cleanups.

The EPA's concern with not paying claims as they come due is that delaying cleanups has a negative impact on the environment and human health. According to division reports, the PST Section pays claims, on average, within 30 days of receipt. In fiscal year 2006, the average processing time for a claim was 27 days.

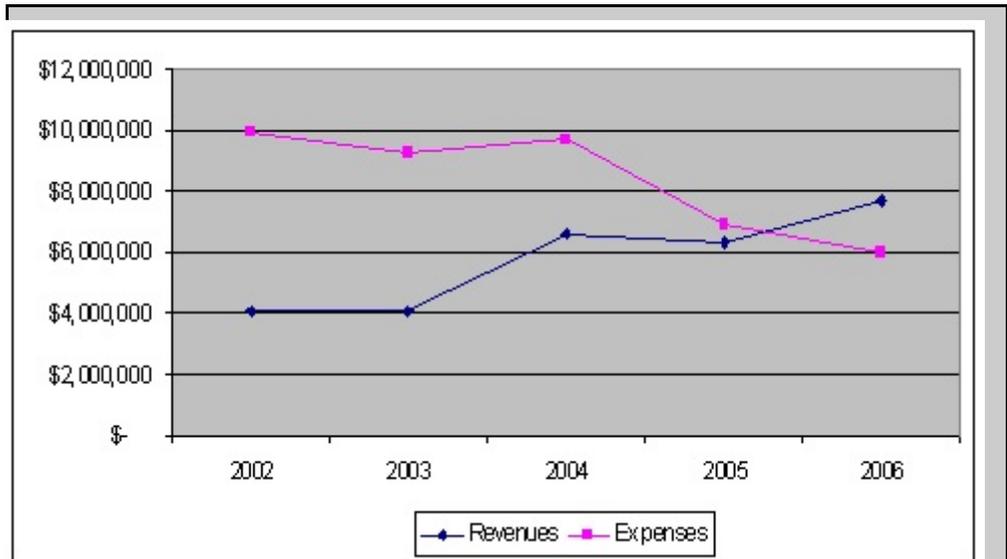
In the June 1990 approval letter from the EPA, approving Utah's Petroleum Storage Tank Fund, the EPA requested that Utah notify the EPA when (1) expenditures from the fund exceed revenue collected, *and*

(2) the ending monthly fund balance is below \$2 million for two consecutive months. The EPA requests this information to allow them “to evaluate the longevity of the fund during low balance periods.” According to the Division, Utah has never had to report to the EPA on these issues.

In the PST Fund, fiscal year 2006 was the first time revenue exceeded expenditures since 1998.

Looking at the fund’s ability to pay claims as they come due shows that fiscal year 2006 was the first time revenue exceeded expenditures since 1998. Figure 3.3 shows the PST Fund revenues and expenses from fiscal years 2002 through 2006.

Figure 3.3 PST Fund Actual Revenue and Expenditures from Fiscal Year 2002 through 2006 Show Improvement.



Fiscal Year	Revenues*	Expenditures*	Fund Balance
2002	\$ 4,090,362	\$ 9,943,426	\$ 16,811,814
2003	4,090,173	9,243,501	11,658,486
2004	6,620,821	9,723,876	8,555,431
2005	6,302,794	6,896,355	7,961,870
2006	7,715,171	5,969,916	9,707,125

* Revenues include surcharge revenue, tank fees, and earned interest. Expenditures include claim and administrative expenses.

An increased fund cash balance does not guarantee the fund’s ability to pay all claims.

We believe the recent increase in revenue to expenditures is a good sign. Continuing on this trend, the division reports to us that as of March

In 2003 Utah law was changed, increasing the fund surcharge revenue.

The division reports cost-cutting measures which should decrease claims expenses, but time is needed before that can be seen programwide.

2007, the cash balance in the fund was about \$11.7 million and expenses were about \$3.2 million. However, the current cash balance does not guarantee the fund's ability to pay all claims, nor does it negate the fact that the PST Fund is obligated to clean all eligible sites up to the statutory limits (as the actuary's review focuses on).

Surcharge Increase Has Helped Improve Fund Balance. We believe one factor that has contributed to the fund's increased cash balance is the effect of a surcharge increase. A review of Figure 3.3 shows the increase in total revenue from 2003 to 2004 was 62 percent, or about \$2.5 million. Surcharge revenue alone, not including other revenue types, increased 84 percent in that time. Senate Bill 85, which became effective July 1, 2003, amended *Utah Code* 19-6-410.5(4) by increasing the environmental assurance fee from one-fourth of one cent to one-half of one cent per gallon.

Reported Cost-Cutting Measures May Help Improve Fund Balance. In addition to the added revenue, the division reports that they have implemented cost-cutting measures to reduce project costs. However, since these remediation systems take some time to run their course, we believe more time will be needed to see the cost-cutting results in aggregate. The main cost-cutting measure reduces soil and water monitoring from quarterly to semi annually. Other reported measures include encouraging excavation for some soil types, as opposed to more expensive methods of soil cleaning, and disposing of contaminated soil in closer, less expensive places. According to the division, once they determine it is environmentally sound to reduce monitoring on a particular leaking site, the reductions have saved the fund approximately \$3,000 to \$174,000 per site. These cost-cutting measures have been reported to the EPA and the actuary as measures the division is working on for program improvement and project cost savings.

One way to illustrate the need for further time to test the cost-cutting measures is to examine previous years' average costs. The division's Access database system generates a report that calculates the average cost of cleanups for cases closed where PST monies were spent within the last five fiscal years. The report shows that in 2006 the average cost was down. However, the report also shows that in 2005 the costs were up from 2004. Unfortunately, the report includes cases that have been open for many years, as far back as 1994 and possibly before that. The cases closed in those respective years may or may not necessarily reflect the

cost-cutting measures reported above. We were told these measures began as recently as 2004.

New EPA Fund Soundness Tool Is Not Yet Reliable for Comparisons

In our attempt to compare other state programs with Utah's program, we reviewed a new fund soundness tool created by the EPA. The EPA has recently implemented this instrument with an aim to evaluate the soundness of each state's PST Fund. However, the tool is still in the preliminary phase. The EPA is currently working out the interpretational kinks in order to receive comparable data from the states.

In February 2007, the U.S. General Accountability Office (GAO) published a report titled *Leaking Underground Storage Tanks: EPA Should Take Steps to Better Ensure the Effective Use of Public Funding for Cleanups*. One of the recommendations in the GAO report states, "We recommend that EPA takes steps to . . . improve the agency's oversight of the solvency of state assurance funds . . ." The GAO found the tool "has had limited usefulness to date, according to agency officials." According to the GAO, in response to new powers granted to the EPA in the Energy Policy Act of 2005:

The EPA has formed a workgroup to examine the issue of how to assess the soundness of the state financial assurance funds and to develop criteria for guidance on the conditions under which it might withdraw fund approval, including what would constitute a lack of financial soundness.

An example of how the tool may not yet be reliable is found in Utah's fiscal year 2005 report. Utah reported that the average cleanup cost for PST Fund covered sites was \$164,504. However, in the fiscal year 2006 report, Utah reported the average cost to be \$19,711. In responding to our question as to the difference, the division explained that in 2005 they did not include the sites eligible for PST Fund coverage that the fund did not pay out on. This could include sites where the cost of closing the site did not exceed the owner's deductible of \$10,000. Although PST Fund monies were not used to manage and close the site, administrative resources were used. Therefore, the division decided to include these sites as well; this method has been neither accepted nor forbidden by the EPA.

Once finalized, the new EPA fund soundness tool could provide a good comparison for state programs and self-evaluation.

Although we question whether reporting that \$19,711 is a representative number to close a case; we do not disagree with the division that sites eligible for PST Fund payment, whether or not the fund actually pays out, could very well be calculated into the figure. The PST Fund project managers are spending administrative efforts and resources in managing these cases as well. Our concern is that the EPA has not given adequate direction on how to calculate this figure so as to produce a comparable number.

Another example causing us to question the tool's usefulness is found in Montana's annual report. For fiscal year 2005, Montana reported the average cleanup cost to be \$14,500. However, for fiscal year 2006, Montana reported the average cleanup cost to be \$63,756. In addition, in fiscal year 2005 Montana reported the total number of tanks for which the fund is liable was 4,151. In 2006 that number was reported as 23,354 with an explanation on how state law defines that number. While we expect each state to have peculiarities, the large variances from these two years are unexplained.

The EPA recognizes there may be different ways of calculating this number. An EPA representative commented that as states gain experience with the alternative ways of calculating average cleanup costs, the EPA will re examine the calculation and perhaps settle on one particular method. We believe once the EPA has decided which method serves the best function, the tool will become more reliable for state fund comparisons and soundness evaluation. Until the fund soundness report's completion requirements are more standardized, we do not believe it to be reliable in making state program comparisons. Also, there will be no reliable historical data for comparison because of the inconsistencies.

In summary, the actuarial report provides valid concerns as to the fund's ability to meet all of its demands. However, the EPA's review is also valid in its review of the fund's ability to pay current claims. We believe the division must generate its own performance measures to be used as a managerial assessment tool, as well as provide additional information concerning the nature of the cases that rely on the fund when reviewing them in context of the actuarial and EPA reports.

The EPA recognizes the tool is still in the preliminary phases and is working through the kinks.

Division-Generated Performance Measures Needed to Complete Program Evaluation

We believe the division needs additional performance measures to assist in program evaluation as well as to provide more valuable feedback to the EPA and the actuary regarding the cases that make up the PST program. The PST Section management should review performance measures for case closure. Also, performance measures are needed to examine the aging of the cases. Finally, the PST Section should accurately track performance numbers they provide to the EPA.

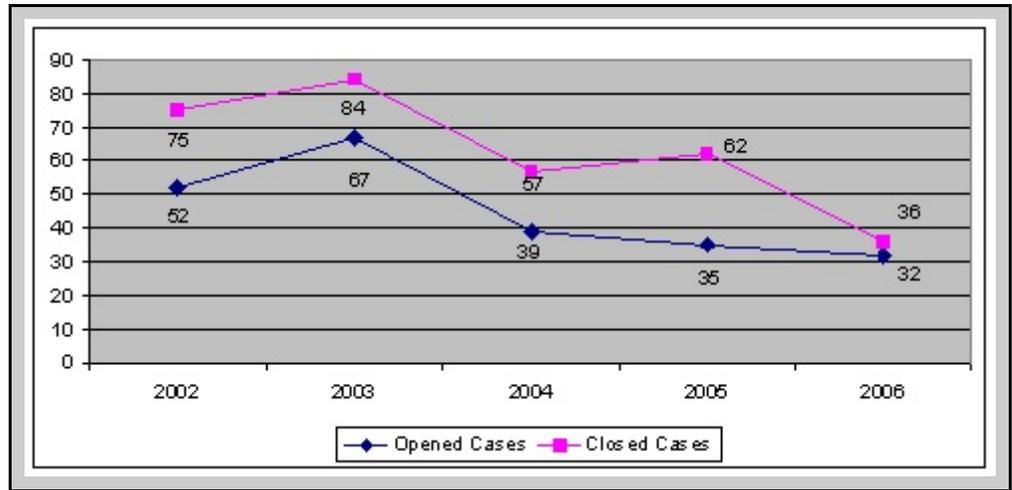
Additional performance measures could provide assurance to the division that cases are being actively managed.

PST Section Management Should Review PST Cases for Closure

We believe the division should utilize additional performance measures to review whether more cases need to be closed. A better understanding of these measures could provide useful information when measuring the soundness of the fund and future financial demands on the fund. Due to the division's lack of performance measures, and in our review of the health of the PST Fund, we generated performance measures on case flow (the opening and closing of cases). The results of the measures could help management understand the nature of the caseload and determine if case management changes are needed.

Cases Closed Are Decreasing. We reviewed the number of opened and closed PST Fund cases for fiscal years 2002 through 2006. Figure 3.4 reflects the number of releases (which are leaks from an underground fuel storage tank) that were eligible for PST Fund coverage.

Figure 3.4 PST Section Open and Closed Cases from Fiscal Years 2002 Through 2006.

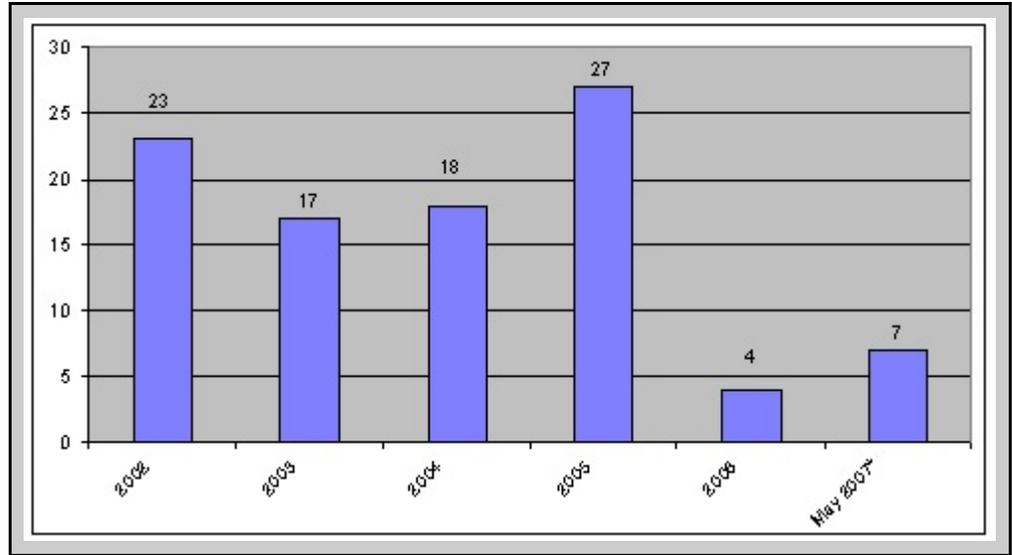


From fiscal years 2002 through 2006, the number of PST Fund eligible leak cases reported and opened have declined. This is reflected in the bottom line on the graph. The top line on the graph also shows a declining number of PST Fund cases that have been closed over the same five years. The division reports that as of May 2007, 51 new PST site cases were opened and 58 cases were closed. Both numbers are increases from last year. The PST Section does not control the number of PST cases that are opened and does not always control when cases are closed. Limitations in case closure are discussed in more detail below.

In analyzing the overall case flow, Figure 3.5 shows that the PST Section closed a net four cases in fiscal year 2006. In addition, as of May 2007, the division reports closing a net of seven cases so far for fiscal year 2007.

The PST Section closed a net four cases in fiscal year 2006.

Figure 3.5 Net Case Closure Significantly Decreased in Fiscal Year 2006. Overall case closure dropped in fiscal year 2006 and appears to be in the same situation for fiscal year 2007 so far.



* As reported by the division

We are concerned that the PST Section may not be closing enough cases. Management should create closure goals for measuring current closure practices.

We are concerned that the PST Section may not be closing enough cases. More importantly, performance measures are not being used to set division goals for case closure and ensure that those goals are being met. In order to assess the closure status cases, we would have had to ask each project manager the status of every case. One case we did discuss with a project manager was ready for closure; however, it has not yet been closed because the project manager has higher priority cases to manage. We believe the division could benefit from reviewing the PST caseload on a regular basis to ensure the appropriateness of open cases and determine that no cases ready for closure are sitting idle.

The PST Section Does Not Always Control When Cases Are Closed. We understand that the PST Section cannot always control case closure. In reviewing the case flow and age of the cases, we discussed with management some limitations in the division's ability to close cases. PST Fund cases may be closed when one of the following events occur: 1) the sites' contamination levels decrease to federally and state set acceptable limits, 2) site cleanup costs reach \$990,000 as set by state law, after which it is the owner/operator's responsibility to fund the remainder of the cleanup, or 3) the owner, with the approval of the program's executive director, may limit the property's use through an institutional

By law the PST Section cannot close a case if contamination is above acceptable limits and cleanup costs have not exceeded \$1 million.

control recorded on the property's deed, thereby closing the PST Fund case.

However, according to the division, PST Fund property owners do not opt for option three because it would leave them with a damaged title on the property. Therefore, cases may be open for several years because the site's contamination levels have not sufficiently reduced and there are still PST Fund monies that may be spent toward reducing the contamination.

Because the division is limited on when cases may be closed, it is vital for them to have an understanding of where each case is in relation to closure and what it will take to get the case there. We recommend the PST Section review case flow by using performance measures aimed at analyzing the appropriateness of the length of time cases are open and the ability to close files. We believe this will enable them to provide more valuable feedback to both the EPA and the actuary on the demands of the caseload as a whole.

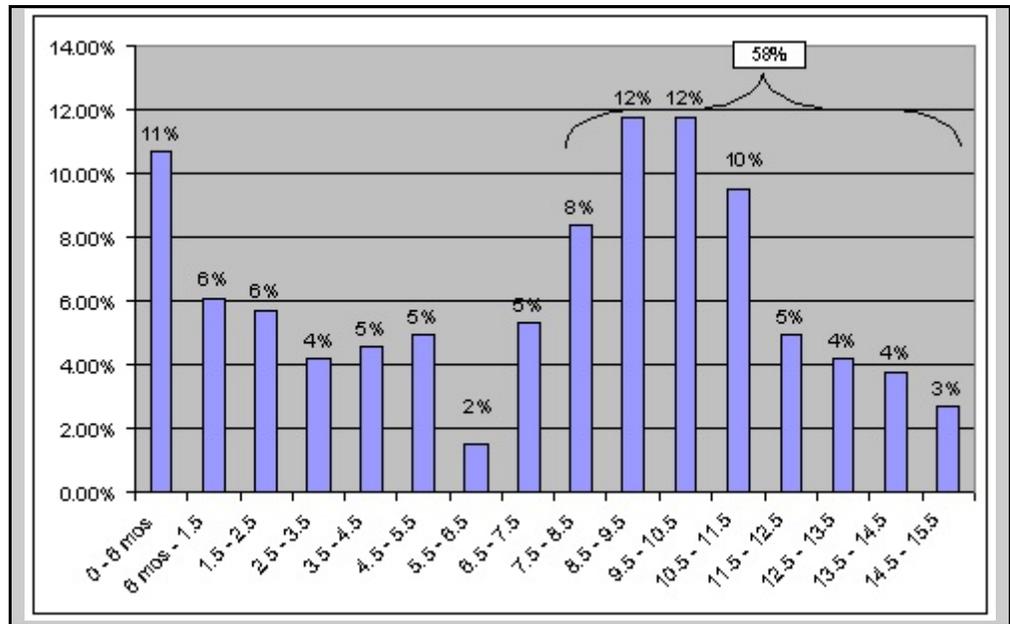
The Actuary Is Also Concerned That Not Enough Cases Are Being Closed. We discussed the PST Section's case flow with the actuary, and he is also concerned that not enough cases are being closed out. According to the actuarial reports, the PST Section's caseload varied during the years we looked at, ranging from about 280 cases in the year 2000 to 220 cases in 2006. At the time of our review, the caseload was about 265. Outstanding cases is one of the actuary's concerns with the fund, as discussed below.

Performance Measures Needed To Review the Aging of Cases

In addition to reviewing case flow, we encourage the division to track and review the age of the cases. Currently, the PST Section does not have performance measures to review the age of the cases. Figure 3.6 shows the percentage of open PST cases and the number of years they have been open, roughly in one-year increments.

Because of their limited control on when cases may be closed, it is vital for the division to know where each case is in relation to closure and what it will take to get the case there.

Figure 3.6 Fifty-eight Percent of the PST Section’s Caseload is 7½ Years Old or Older. The oldest cases are up to 14 and 15 years old.



Performance measures are also needed to ensure the age of cases is appropriate.

Fifty-eight percent of the open cases (about 150 cases) are between 7½ and 15 years old. According to the division, since the inception of the program, these open cases represent a small percentage of the total leaking tanks cleaned up using PST Funds.

However, the actuary believes it will be difficult for the division to make progress with outstanding cases if the division does not start closing out some of those cases they have control over.

Caseload Makeup by Project Manager Raises Questions on the Individual Management of Caseloads. We also examined the aging caseload by project manager. Figure 3.7 shows the percentage of cases within each project manager’s caseloads that are at least 7½ years or older. We chose 7½ years because it appears to represent the bottom half of the data, and the data seems to spike during and after that time period.

Figure 3.7 A Majority of 5 out of the 6 Project Managers' Caseloads Are Over 7½ Years Old.

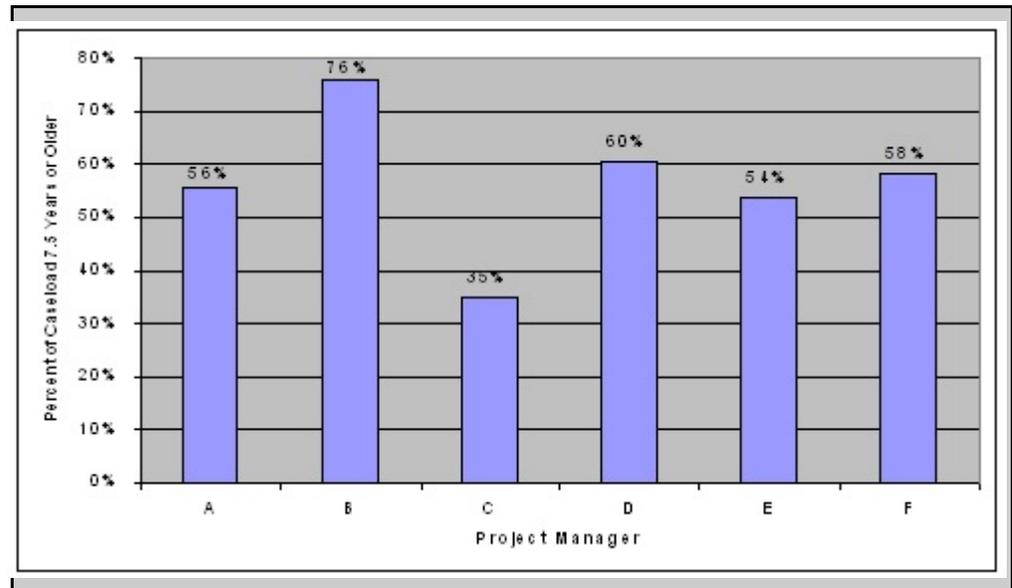


Figure 3.7 shows that the majority of project managers' caseloads are comprised of cases over 7½ years old. In addition, project manager B appears to have an even greater majority of cases over 7½ years old. Conversely, project manager C appears to have a faster turnover of cases, though this may not be the case. It causes us to question how each project manager manages his or her caseload and, more importantly, what division management has done to monitor the aging of the cases in relation to each project manager's caseload.

The division should use performance measures to review individual project manager case management.

We are not saying that Figure 3.7 reflects an inappropriate aging of cases; we believe this is up to the division to analyze. To do so, we encourage the division to use performance measures to ensure all cases are being managed appropriately and closed out in a timely manner. The division does not currently monitor caseload in this way and agrees reviewing cases, by project manager, would be a benefit and help them in their case management.

Recent low overall case turnover, coupled with aging caseloads, raises the concern of the fund's ability to meet the demand.

As mentioned, the actuary stated the cases have been revolving for many years and the division is not closing out enough cases. When reviewing the low overall case turnover in the last few years, coupled with an aging caseload, we are concerned about the division's ability to get on top of their caseload. In the next section we discuss the division's need to accurately track performance measures they provide to the EPA.

Documentation is needed to support numbers reported to the EPA on program performance.

PST Section Should Accurately Track Performance Numbers Provided to the EPA

The division needs to more accurately track the number of start-up remediation systems they observe each year, as well as the number of leaking tank sites they visit annually. This data is needed for their own program measurements as well as to provide data to the EPA that accurately reflects Utah's program. Among other measures reported to the EPA on the status of Utah's UST program, the division reports these two performance measures directly regarding PST Section performance. PST management stated they submit an estimated number for the number of observed start-up remediation systems instead of the actual number. We are concerned that the division is submitting estimated numbers without actual documentation backing them up. In addition, the division was initially unable to provide supporting documentation for the number of visits each project manager made the previous year.

When we asked for documentation, we were given a tabulation of the number of sites visited. These numbers did not have any documentation showing which sites were visited and the date of the visit. In addition, when we reviewed the annual performance appraisals of the project managers, some of the numbers of sites visited listed on the appraisal form were different from the total number of sites visited we were given. We believe part of the reason for the difference is that the project managers report their annual site visits before the end of the fiscal year; therefore, any sites visited in the last month of the fiscal year will not be reflected in their total until the following year. However, we are concerned that the division management does not keep the documentation readily accessible to support the reported numbers.

We discussed performance measures the EPA uses to review the PST Fund with both the EPA and division management. The EPA requires additional performance measures for the leaking underground storage tanks program as a whole, but stated that they do not scrutinize the PST Fund program as much. The EPA sees the PST Fund program as a state program to be managed by the states. Therefore, it is up to the division to ensure Utah's program meets all the requirements. The division needs to validate the performance numbers they are providing to the EPA in order to do so.

Recommendations

1. We recommend the division develop performance measures to analyze PST Fund cases for possible closure and gain a more developed understanding of their caseload as it relates to the soundness of the fund.
2. We recommend the division develop performance measures focusing on aging PST Fund caseloads and individual project manager performance to ensure cases are being efficiently managed.
3. We recommend the division accurately track and document the number of start-up remediation systems they observe each year and the number of leaking tank sites they visit annually with a goal to provide data to the EPA that accurately reflects Utah's program.

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Agency Response



State of Utah

Department of
Environmental Quality

Richard W. Sprott
Executive Director

DIVISION OF ENVIRONMENTAL
RESPONSE AND REMEDIATION
Brad T Johnson
Director

John M. Schaff
Office of the Legislative Auditor General
W315 State Capitol Complex
Salt Lake City, Utah 84114-5315

Dear Mr. Schaff:

Thank you for providing our office with a copy of the "Pre-Exposure Draft" of the Performance Audit of the Petroleum Storage Tank (PST) Trust Fund. We appreciate the opportunity to review the report prior to the public release. We agree with the findings and recommendations of the audit.

Division of Environmental Response and Remediation (Division) staff met with the audit team and discussed the comments and concerns that were identified in the draft, and the report was revised by the authors as needed. Although some of the data used in the report deviates slightly from the Division's analysis, these differences do not materially effect the conclusions and recommendations, and as mentioned earlier, we agree with the findings of the audit.

We appreciate the professional and thorough review that was conducted by the audit team. The Division is currently in the process of evaluating each of the recommendations and incorporating them into our program management practices. The audit team has provided some excellent insight into the program and offered recommendations that we believe will help the Division improve our ability to effectively manage the PST Program.

Sincerely,

Brad T Johnson, Director
Division of Environmental Response and Remediation

BTJ/srb

cc: Richard Sprott, Executive Director, Utah Department of Environmental Quality
William Sinclair, Deputy Director, Utah Department of Environmental Quality
Dale Marx, UST Branch Manager

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

ERRA-49-07

July 12, 2007