

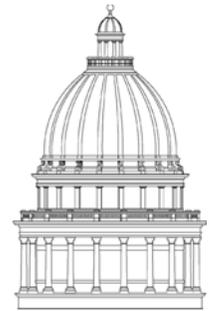
Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

REPORT NUMBER 2010-04
January 2010

A Limited Review of State Agency Regulatory Fees

Receipt of General Fund money to cover expenditures varies among state regulatory agencies. In some regulatory agencies General Fund money is not appropriated; expenditures are generally covered with regulatory fees. In other regulatory agencies, General Fund money is appropriated to cover a portion of expenditures. It appears that regulatory fees in some of these agencies could be increased to cover a larger percentage of the cost of regulation. In fact, regulatory fees in other states offer support for some regulatory fee increases in Utah. By increasing fees, those regulated, rather than the public, would bear more of the cost of regulation, possibly freeing up General Fund money for other uses. Based on the information collected, we believe a change in regulatory fees merits legislative consideration.

The Budgetary Procedures Act states that fees should be “reasonable, fair, and reflect the cost of services provided.” This idea is echoed by a University of Utah economist who talked with us. He noted that, as a general economic matter, those who cause the incurrence of costs should pay those costs. Thus, when the state regulates and incurs regulatory costs, the regulated industries should pay those costs. The University of Utah economist further noted that movement away from this premise results in subsidizing industries. In some cases, there may be good reasons to subsidize a particular industry and some of the regulatory agency personnel with whom we spoke offered such reasons. These reasons, however, need to be clearly analyzed and understood by all involved. The following question must be considered: “Is there a clear reason to subsidize?”



By increasing fees, those regulated, rather than the public, would bear more of the cost of regulation.

The reasons for choosing to subsidize an industry should be clearly analyzed and understood.

Regulatory fees are those established for licensure, registration, or certification.

To begin our review, we used the Fiscal Analyst’s June 17, 2008 interim report entitled *Fees and Fee Revenue* to identify state agencies that receive regulatory fees. To discriminate between regulatory fees and other fees, we also used a fiscal year 2007 database of fees (again developed by the fiscal analysts). Certain agencies whose fees were reported in the database were asked to identify which of their fees were regulatory in nature. The definition of “regulatory fee” provided to each agency came from the 2007 *Utah Code* 63-38-3.2(d): “Regulatory fees means fees established for licensure, registration, or certification.” Agencies that receive regulatory fees in amounts that are less than their expenditures are shown in Figure 1. Agencies listed in Figure 1 are not necessarily totally regulatory (e.g. the Department of Health), but all agencies listed have some regulatory activity.

Figure 1 Agencies Whose Fiscal Year 2007 Regulatory Fees Were Less than Expenditures. Many agencies perform regulatory activities; agencies rely on regulatory fees in varying degrees.

Agency	FY 2007 Actual Expenditures (In Millions)	Sum of FY 2007 Regulatory Fee Revenue (In Millions)	Regulatory Fee Revenue as a Percentage of Actual Expenditures
Environmental Quality	\$ 78.8	\$ 13.6	17.26%
Public Safety	139.1	23.5	16.89
Natural Resources	189.4	22.7	11.99
Labor Commission	10.2	1.2	11.76
Tax Commission	74.8	7.4	9.89
Alcoholic Beverage Control	24.9	1.8	7.23
Agriculture	27.3	1.6	5.90
Insurance	33.8	0.8	2.37
State Office of Education	437.4	5.1	1.17
Health	1,811.2	4.0	0.22
Transportation	1,330.4	0.3	0.02
	\$ 4,157.3	\$ 82.0	

A survey was conducted to identify regulatory agencies whose costs are subsidized with General Fund dollars.

From Figure 1, we chose some agencies to review further with the purpose of identifying industries and professions that are potentially being subsidized by the public.

Regulatory Agencies Vary in Receipt Of General Fund Money

General Fund money is appropriated to regulatory agencies in varying degrees to cover the cost of regulation. Some regulatory agencies receive no General Fund money to cover regulatory expenditures; other regulatory agencies do receive General Fund money.

Some Regulatory Agencies Receive No General Fund Money

The following regulatory departments and divisions are examples of agencies that covered their fiscal year 2009 expenditures without General Fund money:

- The Driver License Division, with expenditures of \$35.1 million in fiscal year 2009
- The Department of Alcoholic Beverage Control, with expenditures of \$28.7 million in fiscal year 2009
- The Division of Solid and Hazardous Waste, with expenditures of around \$8.7 million in fiscal year 2009

Two of these three agencies primarily covered their regulatory expenditures with fees. An exception was the Department of Alcoholic Beverage Control which covered most of its expenditures with regulatory profits from liquor sales. The Division of Solid and Hazardous Waste also used about \$1.5 million of federal funds to help cover regulatory expenditures. Since the three agencies listed above did not receive General Funds to cover expenditures, we did not review them further.

Some Regulatory Agencies Receive General Fund Money

The regulatory agencies we reviewed that receive General Fund money to cover expenditures are shown in Figure 2. This list is not intended to be all inclusive; there are other regulatory agencies that also receive General Fund money.

Fees cover the costs of regulation for some regulatory agencies but not others.

Figure 2 Examples of Regulatory Agencies That Receive General Fund Money. Variation exists in the level of General Fund subsidy received by each regulatory agency.

Agency	FY 2009 Anticipated Expenditures	General Fund Percentage of Expenditures
Department of Natural Resources		
Division of Oil, Gas, and Mining		
Minerals Regulatory Program	\$ 799,100	77%
Administration	1,674,900	26
Coal Regulatory Program	1,837,600	18
Abandoned Mines	4,888,200	1
Oil and Gas Conservation	2,881,900	0
Department of Environmental Quality		
Division of Drinking Water	\$ 4,838,900	36%
Division of Air Quality	13,279,900	35
Division of Water Quality	12,868,900	26
Director's Office	5,669,400	26
Division of Environmental Response	7,576,900*	15
Division of Radiation Control	3,588,900	12
Department of Health		
Bureau of Child Care Licensing	\$ 2,813,700	43%
Bureau of Health Facility Licensing, Cert. and Res. Assess.		
State Licensing Program	883,000	33

**This amount excludes \$31 million of stimulus funds received from the American Recovery and Reinvestment Act.*

The Division of Oil, Gas and Mining (DOGM). DOGM regulates and ensures industry compliance and site restoration while facilitating oil, gas, and mining activities. As shown in Figure 2, the percentage of expenditures covered by General Fund money varies markedly among the DOGM programs. We reviewed the Coal Regulatory Program and contrasted it with the Minerals Regulatory Program and the Oil and Gas Program. These programs differ in both the degree of regulatory effort and the industries' cost coverage.

- The Coal Regulatory Program is completely regulatory with no facilitating activities. In spite of this fact, the coal industry paid virtually none (i.e., \$500) of the Coal Regulatory Program costs in fiscal year 2009. Federal money and General Fund money pay for the cost of this program. In addition, the coal industry did not appear to contribute any fiscal year 2009 funds toward DOGM's Administration program costs.

In contrast, the Minerals Regulatory Program is partially regulating and partially facilitating, according to the division director. The minerals industry covered about 23 percent of the Minerals Regulatory Program costs in fiscal year 2009 with the General Fund

The industries regulated by the different DOGM programs cover costs at varying levels.

covering the remainder. Like the coal industry, the minerals industry did not appear to contribute any funds toward DOGM's Administration program costs during this fiscal year. On the other hand, the Oil and Gas Program is less regulatory than either the Coal or Minerals Regulatory Programs, according to the division director. Regardless, the oil and gas industry paid 97 percent of the Oil and Gas Program costs in fiscal year 2009; the remainder was paid with federal funds. In addition, the oil and gas industry offset DOGM's overhead costs in fiscal year 2009 by contributing funds that covered 42 percent of Administration program costs.

In our opinion, the fees charged by the DOGM programs are of interest because they illustrate that regulation costs can be recovered at quite different levels. Further, industry coverage of the Coal Regulatory Program's expenses seems inconsistent with the Budgetary Procedures Act that requires fees to be reasonable and fair, and to reflect the cost of services provided. As a consequence of fee setting, the general taxpayer appears to subsidize the coal and minerals industries but not the oil and gas industry.

The Department of Environmental Quality (DEQ). For each DEQ division, the percentage of expenditures covered by General Fund money in fiscal year 2009 is shown in Figure 2. We further reviewed two DEQ divisions that had available comparative data: the Division of Water Quality and the Division of Radiation Control. Both divisions are regulatory, but the fees paid by the regulated industries differ in their coverage of division costs.

- The Division of Water Quality's mission is to protect, maintain and enhance the quality of Utah's surface and underground waters and to protect the public health through eliminating and preventing water-related health hazards. In fiscal year 2009, the regulated industries covered around 9 percent of the division's costs while the General Fund covered around 26 percent; the remaining costs are primarily covered by federal funds. Consequently, general tax money appears to subsidize the regulated industries, and, in fact, tax dollars from the public are currently paying more of the regulation costs than the industries themselves.
- The Division of Radiation Control's mission is to "protect Utah citizens and the environment from sources of radiation

Taxpayer dollars subsidize the coal and minerals industries but not the oil and gas industry.

Tax dollars from the public subsidize industrial use of surface and underground waters.

that constitute a significant health hazard.” In keeping with this mission, the division regulates low-level radioactive waste generators and disposal sites, uranium mills, x-ray equipment owners and operators and radioactive material users. Through fees, these regulated industries and users covered around 82 percent of the Division of Radiation Control’s costs in fiscal year 2009, the General Fund covered around 12 percent and the remaining costs were covered by federal funding. As a result, the general taxpayer appears to subsidize industries and professions involved in the radioactive materials and x-ray programs.

The Department of Health. We reviewed two regulatory programs in the Department of Health that had available comparative data: the Bureau of Child Care Licensing and the State Licensing Program within the Bureau of Health Facility Licensing, Certification and Resident Assessment.

- The Bureau of Child Care Licensing regulates child care providers. Child care providers who care for more than eight children must be licensed by the Bureau; child care providers who care for eight or fewer children must be licensed or certified by the Bureau. As noted in Figure 2, 43 percent of the Bureau’s expenditures were covered by the General Fund; the regulated child care providers covered around 3 percent of the Bureau’s costs. Again, the remaining costs are covered with federal funds. So, the public subsidizes child care providers and, in fact, covers more of the regulatory costs than regulated child care providers cover.
- The State Licensing Program within the Bureau of Health Facility Licensing, Certification, and Resident Assessment is a regulatory program. All health care facilities in the state, excluding private providers’ offices, must be licensed through this program. In fiscal year 2009, the health care facilities covered around 67 percent of the State Licensing Program’s costs through fees; the General Fund covered the remaining 33 percent, as shown in Figure 2. It appears then that the public subsidizes the regulation of health care facilities.

As noted, the agencies highlighted in this section are regulatory to a large degree. In all cases, General Fund money was used to cover

Taxpayers pay a greater portion of the cost of child care provider regulation than do the actual child care providers.

some of the regulatory agencies' costs. Sometimes, the General Fund contributed more to agency costs than the regulated industries themselves contributed. Ultimately, it may be determined that there are good reasons for the public to subsidize these various regulated industries. However, regulatory fees charged in other states provide evidence that some regulated industries in Utah could pay more of the cost of regulation.

Regulatory Fees in Other States Offer Support for Regulatory Fee Increases in Utah

In general, the regulatory fees charged in other states are higher than those charged in Utah. In fact, among the entities compared, Utah's fees are often some of the lowest charged for a particular regulated activity. Consequently, we believe the potential exists for regulatory fee increases in Utah.

Fee increases would have regulated entities paying for a greater portion of the cost of the regulatory oversight that their activities require while potentially freeing up General Fund dollars for other uses. Agencies may be uncomfortable with this latter possibility because General Fund money is viewed as a stable funding source while fee revenue is viewed as a volatile funding source.

Of the five programs/agencies reviewed, most have disproportionately low regulatory fees compared with the fee amounts charged by similar entities.

Fees in the following programs/agencies were reviewed:

- Coal Regulatory Program within the Division of Oil, Gas and Mining
- Division of Water Quality within the Department of Environmental Quality
- Bureau of Child Care Licensing within the Department of Health

Because Utah's fees are some of the lowest charged for certain regulated activities, we believe potential exists for fee increases.

- State Licensing Program within the Bureau of Health Facility Licensing, Certification, and Residential Assessment
- Division of Radiation Control within the Department of Environmental Quality

These programs/agencies were chosen because of the ready availability of fee comparison data.

Coal Regulatory Program Collects Lowest Fees Of Other States and Federal Government

Our 2007 audit of the state’s Coal Regulatory Program found that the nominal permitting fees charged to the coal industry in Utah are inconsistent with much larger amounts that are charged in some other western states. Figure 3 summarizes the comparison.

Figure 3 Comparison of Initial Permitting Fees for Coal Mining Operations, 2007. Utah’s permitting fee is the lowest among the states and federal agency with which it is compared.

Entity	Initial Permit		Permit Alterations	Annual Fees
	Flat Fee	Acreage Fee		
U.S. Office of Surface Mining ¹	\$3,600	\$13.50 to \$3.00	0	0
State of New Mexico	2,500	25 per acre < \$15,000	\$4,000 ²	\$2,500 ³ + acre fee
State of Wyoming	100	10 per acre < \$2,000	\$200 ³ + acre fee	0
State of Colorado	25	10 per acre < \$2,500	0	0
State of Utah	5	0	0	0

¹The office breaks the permit process fees into three areas: \$250 to determine if the permit is administratively complete, \$1,350 to perform a technical review plus acreage fee, and \$2,000 to prepare a decision document.

²The \$4,000 charge is for significant revisions, they do not charge for minor permit changes. All mines are charged the annual fee, whether actively producing or not.

³The initial permit fee cannot exceed \$2,000 (including flat and acreage fees). The permit alteration is a \$200 flat fee, plus \$10 per acre, not to exceed \$2,000.

The figure shows that the fees charged by Utah’s Coal Regulatory Program are negligible compared with those charged in other states and by the federal government. The audit also pointed out that it is inconsistent that regulatory fees are not charged in the Coal Regulatory Program of the Oil, Gas and Mining Division but that regulatory fees are charged in the division’s Minerals Regulatory Program and in many other Utah regulatory agencies.

As a consequence of these findings, the audit report recommended that the division devise a fee structure and present it to the Legislature for consideration. In November 2008, the Oil, Gas

Other states charge regulatory fees that are much higher than what Utah’s coal industry pays.

and Mining Division submitted a fee proposal (shown in Figure 4) to the Natural Resources, Agriculture, and Environment Interim Committee.

Figure 4 Proposed Regulatory Fees for Utah’s Coal Industry. The fees proposed in 2008 by the division would have covered over 60 percent of the state’s cost of regulating the coal industry.

Recommendations by The Division of Oil, Gas and Mining (November 2008)			
Type of Fee	Fee Amount	# Per Year	Annual Fee Revenue
New Application	\$ 6,000	0.2	\$ 1,200
Amendments, Minor	-	0	-
Amendments, Major	-	0	-
Annual Fee, Active Mines/Facilities	8,000	14	112,000
Annual Fee, Inactive Mines/Facilities	4,000	14	56,000
Total Annual Fee Revenue			\$ 169,200

The program collected no fee revenue in fiscal year 2008 under the current fee schedule and \$500 in fiscal year 2009. Had the division-proposed fees been authorized and collected in fiscal year 2008, the Coal Regulatory Program would have recovered about 62 percent of the General Fund amount that it ultimately received. The Utah Mining Association has reportedly not accepted the concept of any further fees being imposed on the coal industry. The Legislature has not yet taken any action to require that the Coal Regulatory Program charge greater fees in order to begin recouping regulatory costs. We recommend the Legislature consider taking action to increase fees.

Utah’s Surface and Ground Water Discharge Permit Fees Are Often Much Less than Fees Charged in Other States

Permit fees charged by the Division of Water Quality are low relative to similar fees charged in other states. Among other fee revenue sources, the division receives fee revenue from two major fee categories: surface water discharge permit fees and ground water discharge permit fees. The purpose of these fees is to regulate acceptable pollution levels. The annual ground water permit fees have not been increased since their implementation in 2000. Other fees have not been increased since 1991. Figures 5 and 6 show the

The revised fee schedule for the Coal Program (proposed by the Division of Oil, Gas and Mining in November 2008) would still require some General Fund subsidy.

Some regulatory fees in the Division of Water Quality have not been increased in many years.

division's current fees relative to other states for surface water and ground water discharge.

Figure 5 Comparison of Surface Water Discharge Permit Fees.

Utah's permitting fees are generally significantly lower than others in the country. The division is aware of the low fees and is considering increased fees. Data in this table was provided by the Division of Water Quality.

State	Annual Fee Per Permit Type						
	Major POTW**	Minor POTW**	Major Industry	Minor Industry	Surface Water: Construction	Surface Water: Industrial	Municipal Storm Sewer System
MT	\$ 25,800	\$ 5,200	\$ 15,900	\$ 3,500	\$ 540	\$ 750	\$ 950
WY	100	100	100	100	100	100	100
SD	100,000	25,000	up to 30,000	up to 30,000	-	-	-
NV	22,000	7,200	12,000	7,200	1,050 to 1,750	-	1,350 to 2,000
CO	19,780	6,090	12,140	9,880	245	295 to 385	1,245 to 10,580
KS	1,850	185	1,600	320	60	60 to 320	>100K pop: 2,000
OK	8,466	1,566	9,027	4,072	Points system	Points system	550
UT Current	-	-	2,160	540	100	100	500 to 3,000

* Fees for licenses that last for a five-year period have been annualized in this table. Some states charge application fees which range from \$500 to \$10,000. Utah does not charge application fees.

**Publicly owned treatment work

The Division of Water Quality believes their surface water discharge permit fees are low.

As shown in Figure 5, Utah is the only state that does not assess a fee on major and minor publically owned treatment works. The fees Utah assesses on major and minor industry are higher than fees in only two other comparative states, Kansas and Wyoming. Similarly, Utah's construction surface water fees are only higher than those in South Dakota and Kansas while Utah's industrial surface water fees are only higher than those assessed by South Dakota and Nevada. Utah's comparative fee range on municipal storm sewer systems is less clear; the lower range exceeds fees in only two states, Wyoming and South Dakota, while the higher range exceeds fees in all but one state, Colorado. The Division of Water Quality believes their rates are low, and are considering possible rate increases. Rate increases have not been proposed in the past because the department had other priorities.

Figure 6 Comparison of Utah’s Ground Water Discharge Permit Fees with Those of Nevada. Utah’s fees are markedly lower than Nevada’s. Because of unique measurement standards, Nevada is the only other state with which Utah’s ground water discharge permit fees can be reasonably compared. Data in this table was provided by the Division of Water Quality.

Ground Water Discharge Permits			
Utah		Nevada	
Acreage	Current Annual Fee	Acreage	Annual Fee
0-1	\$ 350	<10	\$ 1,736
1-15	700	10-19	2,315
15-50	1,400	>19	2,894
50-300	2,100		
>300	2,800		

Comparing the current ground water discharge fees shown in Figure 6, Utah’s fees are lower than Nevada’s in all categories. As with surface water discharge permits, the Division of Water Quality believes their ground water discharge permit fees are low. The division is considering fee increases.

Utah’s Child Care Facility Licensing Fees Are Much Lower Relative to Other Western States

Child care facility licensing fees in Utah are described as minimal by the bureau director, and they are some of the lowest fees among western states. Consequently, there appears to be opportunity to decrease the amount of subsidy received by the program.

In January 2009, the Arizona Auditor General’s Office released an audit report that examined child care facility licensing fees in surrounding western states. The audit reported on renewal fees for larger facilities (i.e., 100 children) but also collected data on renewal fees for smaller facilities (8 and 16 children). Figure 7 shows the result of the comparisons.

Ground water discharge permit rates in Utah are lower than those in Nevada, the state whose rate methodology is most comparable to Utah’s.

Figure 7 Comparison of Fiscal Year 2009 Renewal Licensing Fees for Child Care Facilities in Utah and Eight Western States. Utah's renewal fees for the smaller facilities are the second lowest of the nine states; renewal fees for larger facilities are midrange. (Data compiled by the State of Arizona Office of the Auditor General.)

Annual Child Care Facility Licensing Renewal Fees*					
(8 children)		(16 children)		(100 children)	
California	\$ 200	California	\$ 200	California	\$ 800
Colorado	70	Nevada	100	Washington	400
Nevada	60	Colorado	70	Oregon	200
New Mexico	55	Washington	64	Utah	175
Arizona	50	New Mexico	55	Colorado	160
Washington	48	Texas	51	Nevada	150
Texas	43	Arizona	50	Texas	135
Utah	37	Utah	49	New Mexico	55
Oregon	16	Oregon	32	Arizona	50
Average of all states but UT:	68	Average of all states but UT:	78	Average of all states but UT:	244

Fees include all application, capacity, and other fees charged for renewal licenses in these states. Fees have been annualized for states with different licensure periods.

Colorado's child care facility renewal fee for 8 children is 89 percent higher than Utah's. For 16 children, Colorado's fee is 43 percent higher than Utah's.

Arizona is currently trying to increase their licensing fees to cover 100 percent of the cost of regulation.

The Utah Child Care Licensing Bureau director indicated that Utah does not have many large child care facilities; smaller facility comparisons are more relevant. As shown in Figure 7, Utah's renewal fees for facilities caring for 8 children and for 16 children are very low in comparison to fees charged by the other western states. Colorado's renewal fees for 8 and 16 children are 89 and 43 percent higher, respectively, while California's fees are over 300 percent higher for both comparisons. It appears from these comparisons that regulatory fees in child care licensing could be increased. Based on the audit findings, the Arizona Division of Licensing Services is currently trying to increase their licensing fees to cover 100 percent of the cost of regulation.

Making child care licensing entirely fee funded in Utah was discussed during last year's General Session. The bureau director responded by saying that "child care providers operate on a very low profit margin, and increasing licensing fees by over 15 times (the increase needed to cover the General Fund portion of the budget) would put some providers out of business." In our opinion, while it may not be possible to completely eliminate the General Fund subsidy, it seems clear that fees can be increased.

Utah's Health Facility Licensure Fees Are Often Much Less than Those in Other Western States

Health facilities in Utah pay some of the lowest regulatory fees among western states.

In the same, previously cited January 2009 audit report, the Arizona Auditor General's Office reported on health care facility licensing fees charged in western states. Utah was included as a comparison state. Figure 8 shows the differences in fees among comparable states.

Figure 8 Comparison of 2009 Renewal Licensing Fees for Health Facilities in Utah and Eight Western States. California and Nevada set fees with the intent to fully recover regulatory costs. (Data was compiled by the State of Arizona Office of the Auditor General.)

Renewal Licensing Fees*					
Hospital (100 beds)	Inpatient Hospice (10 beds)	Psychiatric Hospital (45 beds)	Nursing Home (120 beds)	Home Health** Agency	Assisted Living Center (70 beds)
CA \$25,776	CA \$ 1,875	CA \$ 11,599	CA \$ 34,440	CA \$ 4,159	NV \$ 7,622
WA 11,300	NV 1,702	NV 6,350	WA 33,000	NV 1,517	WA 5,530
NV 8,000	TX 875	TX 4,510	NV 4,700	WA 1,081	AZ 2,000
OR 2,900	OR 750	WA 3,150	AZ 3,350	TX 875	CO 1,760
AZ 2,850	WA 721	CO 2,155	UT 1,640	UT 755	CA 1,126
CO 2,615	AZ 400	AZ 1,275	TX 725	OR 600	UT 900
TX 1,960	CO 360	OR 1,000	NM 720	AZ 150	TX 450
UT 1,700	UT 320	UT 875	OR 450	NM 100	NM 150
NM 600	NM 100	NM 270	CO 360	CO ***	OR 30

*Fees include all application, capacity, and other fees charged for renewal licenses in these states. Fees have been annualized for states with different licensure periods.

**Home health agencies have no bed capacity.

***Colorado had not begun licensing home care agencies at the time this data was gathered.

California and Nevada, whose fees are often thousands or tens of thousands of dollars greater than Utah's, require that the cost of health care facility regulation be recovered through fees. As shown, Utah's fees are well below California's and Nevada's and are generally low among all the states compared. As noted earlier, based on the audit report findings, the Arizona Division of Licensing Services is currently trying to increase their licensing fees to cover 100 percent of the cost of regulation.

Making health facility licensure totally fee funded in Utah was discussed during last year's General Session. Health's response was that to accomplish this, licensing fees would have to be increased by 100 percent or more, which would impose a significant burden on the

California and Nevada require that the cost of health care facility regulation be recovered through fees.

business enterprises trying to enter the health field, potentially limiting access to services.

Currently, Radioactive Waste Disposal Industry Fees Do Not Cover the Full Cost of Regulation

Radiation Control's waste disposal costs are not fully covered through regulatory fees. We compared the statutes that govern the different low-level radioactive waste disposal regulators in the United States. Utah's statute is the only one that omits either mandating or authorizing full recovery of the cost of radioactive waste disposal regulation through fees.

In fiscal year 2009, the fees paid by the regulated radioactive waste disposal facility and its users did not cover the regulatory costs incurred by Radiation Control. The regulated industries paid approximately \$785,000, while Radiation Control's expenditures exceeded \$1 million. (Between fiscal years 2004 and 2007, the regulated waste disposal facility and its users paid more than Radiation Control's costs. For example, in fiscal year 2006, these regulated industries paid approximately \$3.2 million, while Radiation Control's costs were again estimated at a little over \$1 million.)

Unlike other entities, Utah does not require radioactive waste disposal regulatory costs to be reimbursed by fees. Under the U.S. Nuclear Regulatory Commission, Utah's Division of Radiation Control oversees one of the country's four operating low-level radioactive waste disposal sites (a fifth site, in Nevada, is now closed). The division's oversight consists of disposal and generator licensure and facility and shipment inspection.

In fiscal year 2009, the regulated radioactive waste disposal industry's fees did not cover Radiation Control's costs.

Figure 9 Comparison of Federal and State Statutes on Fee Setting for Agencies That Regulate Radioactive Waste Disposal. Utah does not mandate recuperation of expenses through fees.

Entity	Statutory Mandate to Recover Costs Through Fees?*
U.S. NRC	Yes**
Nevada***	Yes
South Carolina	Yes
Texas	Yes
Utah	No
Washington	Yes

*Some states mandate the collection of fees in order to recover regulatory costs, others only authorize such. In all cases but Utah, fee rates have been set and collected with the intent to recover costs.

**Federal law requires that the United States Nuclear Regulatory Commission recover at least 90% of its costs through fees. The other entities, with the exception of Utah, seek full cost recovery through fees.

***The Nevada site is now closed. Fees recovered costs during the years the site received waste. A perpetuity account provides funding for the site's ongoing monitoring.

The majority of fees received by the division are associated with low-level radioactive waste disposal at the Energy Solutions facility in Clive, Utah, and the amount of fee revenue is based on the volume of waste disposed. Current fee revenue is significantly lower than it has been in previous years because Energy Solutions is now receiving a much lower annual volume of waste. The division reports that Energy Solutions expects to receive annual volumes of waste similar to the 2008 and 2009 levels for each of the next five years.

While waste volume and fee revenue have declined, regulatory costs have not. Fee revenues have become insufficient to offset the more stationary costs of regulation. If another cost-recovery method is not implemented, the division's costs will have to be met from one of the following:

- Prior-year surplus collections within the Environmental Quality Restricted Account
- Subsidization by solid and hazardous waste facilities that also pay into the Environmental Quality Restricted Account
- Subsidization by the General Fund

Utah may wish to consider adopting the cost-recovery model

Fee revenue in the Division of Radiation Control is lower than in previous years because a lower volume of waste is being disposed of at the Energy Solutions facility.

In Texas (and possibly soon to be adopted in Washington), the radioactive waste disposal site operator is billed with the costs of its regulation.

For those agencies that both receive General Fund money and charge relatively low fees, we believe regulatory fees merit legislative consideration.

that is currently in use in Texas. In Texas, the radioactive waste disposal site operator is simply billed with the costs of its regulation. Washington State is already proposing adoption of the Texas model.

Like Utah's site, Washington's radioactive waste disposal site expects to receive lower amounts of radioactive waste during incoming years. If the Texas model, or another model, is not put into operation, Washington's model of cost recovery through volume-based fees will soon require Washington to subsidize the cost of its radioactive waste disposal site's regulation.

The fees paid by the radioactive waste disposal industry (along with other solid and hazardous waste fees) are being analyzed by the Department of Environmental Quality.

Since some regulatory agencies are provided General Fund money to cover regulatory expenses, and since these regulatory agencies' fees appear to be comparatively low, we believe regulatory fees are worthy of legislative consideration.

Regulatory Fees Merit Legislative Consideration

We believe legislative consideration of regulatory fees is merited and timely. As shown in this report, fees could be increased in some regulatory agencies whose costs are currently subsidized with General Fund money. The Legislature could begin this process by adopting a revenue-and-cost reporting model similar to the one used in Florida. Based on this model, information obtained would then become the basis for a discussion between the Legislature and the agencies on what are the appropriate levels of regulatory fee cost coverage. In our opinion, the Legislature should approach these discussions from the economic standpoint that regulatory fees should cover 100 percent of regulatory costs. Agencies and regulated entities would then have the opportunity to provide compelling information as to why an exception should be made.

The model used in Florida offers a reasonable way for the Legislature to begin analyzing the adequacy of regulatory fees. Very simply, as part of its annual legislative budget request, each regulatory

agency in Florida submits a brief schedule that reports the agency's regulatory fees along with all other revenue sources and all direct and indirect costs. (Including indirect or overhead costs is important; these costs are real and must be paid by someone.) The data is then used by the Florida Legislature and the agency itself to assess whether the agency's regulatory fees are appropriately set.

It also appears that Florida's schedule can be prepared by agencies with minimal burden. Included in the schedule are questions about 1) the adequacy of the agency's fees to cover both the direct and indirect costs of the regulation provided, 2) whether the fees are reasonable and appropriate for the size of the entity being regulated, and 3) for those regulatory agencies that are not statutorily required to be self-sufficient, what plans the agency has in place to reduce dependence on subsidies.

Implementing the Florida model would provide the Legislature with fully allocated cost and revenue data for all regulatory agencies. Once this full cost and revenue data was compiled and presented, the Legislature and the agency could then discuss the adequacy of existing regulatory fees. We believe the Legislature should begin this discussion from the standpoint that 100 percent of regulatory costs (direct and indirect) should be covered by regulatory fees. This standpoint is in line with the general economic premise that those who cause the incurrence of costs should pay those costs. It would then fall to the regulatory agencies and the regulated industries to present compelling information as to why regulatory fees should not or cannot be used to cover all regulatory expenses. These public discussions would provide clarity as to the reasons behind regulatory fee establishment and any resulting industry subsidization.

Putting into practice an annual regulatory fee examination could potentially yield a number of other benefits, some of which are listed below.

- The attention of agencies would be regularly drawn to the necessity of monitoring or implementing appropriate regulatory fees, perhaps with the goal of reducing reliance on General Fund money.

Basic fee and revenue data is provided to the Florida Legislature each year as regulatory agencies submit their annual budget requests.

Adopting an annual fee examination process similar to Florida's would provide a simple method to the Legislature for evaluating the adequacy of a regulatory agency's existing fees.

- Necessary data would be readily accessible for determining appropriate fee amounts.
- The Legislature would be provided with more comparable data from different agencies.

We believe it is an appropriate time to reassess regulatory fees and to reevaluate the role of those fees in funding agencies. As the previous section explained, room exists to increase some regulatory fees in order to bring them more in line with rates being charged in other states. Increasing the self-sufficiency of agencies could thereby decrease the amount of demand for state General Fund dollars.

Recommendations

1. We recommend the Legislature analyze the sufficiency of fees collected by all regulatory agencies receiving General Fund money and increase fees where appropriate.

Agency Response



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of
Environmental Quality

Amanda Smith
Executive Director

OFFICE OF SUPPORT SERVICES
Craig P. Silotti, CPA
Director

January 25, 2010

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

Mr. Schaff,

Please find below the Utah Department of Environmental Quality's response to your office's Exposure Draft "A Limited Review of State Agency Regulatory Fees."

DWQ Response to the Legislative Auditor Report on Fees

Utah DWQ's recommendation for sustaining a healthy water quality program in Utah would be to continue with a mix of general funds, increased user fees and federal funding.

Supporting reasoning and comments on the report:

1. Page 17, paragraph 3 of the draft report states: *"We believe the Legislature should begin this discussion from the standpoint that 100 percent of regulatory costs (direct and indirect) should be covered by regulatory fees."*

A significant part of DWQ's mission and workload deals with activities that directly benefit the public interest and well-being. Some of DWQ's core programs, such as statewide ambient water quality monitoring, assessment and nonpoint source pollution control efforts, are not attributable to industrial or municipal surface or groundwater permit holders. These activities are nevertheless critical in protecting our valuable water resources and public health. While federal funding provides a significant portion of the funds to sustain this work, state match for the federal funds should appropriately come from general fund appropriations.

168 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144810 • Salt Lake City, UT 84114-4810
Telephone (801) 536-4440 • Fax (801) 536-4441 • T.D.D. (801) 536-4414

Office of the Utah Legislative Auditor General

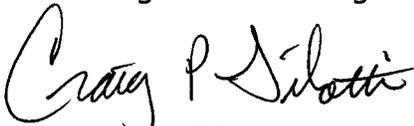
www.deq.utah.gov
Printed on 100% recycled paper

-21-

2. Dependence on fee revenues is a more volatile and variable funding source. Fluctuations in fee revenues, as a result of economic downturns, can prove very difficult for regulatory agencies whose workload and staffing requirements do not necessarily decrease when the economy cools. Other states that depend heavily on fee revenues (for example, Nevada) have experienced extreme budget difficulties recently. They are faced with staff layoffs due to decreasing fee revenue while workload demands remain unchanged.

DWQ is supportive of permit fee increases, but does not believe that replacing general funding entirely with revenues generated from permit fees is prudent if a viable water quality program is to be sustained.

Thanks again for allowing us to comment and respond.



Craig Silotti, CPA
Director, Office of Support Services

January 26, 2010

Marc E. Babitz, M.D., Director
Division of Family Health and Preparedness

John M. Schaff, CIA
Auditor General

Dear Mr. Schaff,

Thank you for providing me with the confidential exposure draft of your report titled, "A Limited Review of State Agency Regulatory Fees." I also appreciate the chance to comment on this report prior to its official release.

I would like to begin by complimenting your staff, particularly Ms. Coleman, who worked on this report and performed the interviews with me and my Bureau Directors from the two, surveyed Bureaus. Also, I would like to note the reorganization within the Department of Health which has resulted in a name change for my Division. During the time period for this review, I directed the Division of Health Systems Improvement which contains the Bureau of Child Care Licensing (CCL) and the Bureau of Health Facility Licensing, Certification and Resident Assessment (HFLCRA). I continue to supervise these Bureaus as part of our new Division.

I appreciate seeing this report and I am in basic agreement with the majority of the information provided. Philosophically, I also support the concept of "user fees" to support government services that benefit a very specific industry. I also wish to offer some limited comments and concerns with the report.

This report notes that the HFLCRA Bureau receives approximately \$1.2 million in state funding. It is important to understand that approximately \$400,000 of this amount is used in the survey and certification program and is required to match the nearly \$4 million dollars received from the federal government (CMS). The remainder supports the licensing program.

It should be noted that the licensing program has two components. There is the plan review part of the program and their fees cover approximately 90% of their costs. Also, statute allows those fees to return directly to that program. On the other hand, the fees charged by the facility licensing part of this program only cover about 2/3 of the cost of the program, but those fees are returned to the general fund. While raising fees in the facility licensing program would more fully cover costs, statute would need to be changed to allow those funds to go directly to the program.

Page 11 begins an analysis of the fees charged by the Bureau of CCL. The comparison chart which shows Utah as having some of the lowest CCL fees in the region does not provide a complete picture of this

issue and comparison is thus, difficult at best. In comparing licensing fees of various states, two additional information sources are needed to allow for equitable comparison. First, the report should indicate what percent of the state's licensing expenses are covered by fees versus general tax revenues. Second, the report should indicate the relative intensity (or limited nature) of each state's licensing activity which would be reflected in their overall expenses. Without these comparisons, the current chart may well be comparing "apples" to "oranges."

This report does accurately reflect that child care providers in Utah operate on a very low profit margin and pay very low wages as a result. The report correctly states that it would require at least a 1500% increase in fees in order for fees to cover the cost of child care licensing in Utah. The report does not address the important public benefit that child care licensing provides. Child care licensing can and should be viewed as a child safety and developmental program and as an economic stimulus program. The first aspect, safety and development, is important for any society as an investment in their future (the proper care of children). The second aspect, economic development, is important since child care allow parents to pursue education and training opportunities and allows them to be actively employed.

On page 13, regarding the Bureau of HFLCRA, we noted that licensing fees would have to be increased by nearly 100% to cover **all** of the general fund costs for this program. However, an increase of approximately 25% for plan review and facility licensing fees (along with a statute change to return these funds to the Bureau) should be adequate to cover the cost of these two aspects of the licensing program. While having safe health facilities is in the interest of the general welfare of the society, these licensees are in a more profitable business than the child care providers.

Again, I fully support this report and its conclusions and recommendations. I hope my comments provide further clarification and understanding. Please contact me if you have additional questions.

Sincerely,

Marc E. Babitz, M.D.