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Digest of
A Performance Audit of
The Department of Environmental Quality

The Utah Department of Environmental Quality (DEQ) has grown substantially since 1990, developing from a state division into a full-fledged department. Growth in both budget and staff have primarily been in response to national Environmental Protection Agency (EPA) directives and some state-sponsored legislation. DEQ has grown out of necessity to accommodate new federal requirements, however, there are changes taking place federally that may signal a new direction for state environmental policy. The EPA is undergoing philosophical changes that will affect DEQ in both funding and programs administration. It is possible that the state will gain more authority and responsibility for programs but be less able to rely on federal funding, thus making it necessary for the state to find new ways of paying for programs. In anticipation of these changes, the state should begin exploring new funding mechanisms and identifying environmental priorities. As part of this process, the DEQ should pay close attention to local needs and rethink methods of service delivery and agency organization to better serve the citizens Utah.

This audit was requested by the Legislative Process Committee to serve as part of that committee's in-depth budget review of the Department of Environmental Quality. As such, the audit is not a comprehensive review of the department's many environmental programs nor does it attempt to evaluate either the effectiveness or efficiency of any individual program. Rather, we have conducted a general survey of the department's organizational structure, funding sources, and overall effectiveness in responding to current and proposed federal and state environmental legislation. However, some areas and programs were reviewed in more detail at the request of individual legislators. During the course of the audit, we found areas where attention and possibly improvements are needed. The following statements summarize the most significant of those findings and conclusions:

State Program Growth is a Result of Federal Involvement. State environmental programming is driven by federal EPA programs and the accompanying funding. DEQ staff and budget have experienced dramatic growth in response to increasing EPA requirements and as the transition from a division of the Department of Health to a full-fledged department has been made. In the past 5 years, the EPA has expanded existing programs and added new programs to state requirements all of which have contributed to the growth of environmental staff in all states. In addition, Utah's operating budget has increased significantly. Federal funding increases accounted for the greatest dollar amount increase for the fiscal years 1990 through 1994. Even though the DEQ has experienced unusual growth, that growth is attributable to funding from sources other than general funds appropriated by the Legislature.

Looking ahead, the state needs to anticipate federal funding changes. The EPA Five-Year Strategic Plan indicates that states should rely less on federal funding for environmental programs in the future. States may have an increased responsibility for funding programs if these changes take place. However, the EPA plans to offer block grants that will be more general in nature, allowing states to apply funding in a more comprehensive way. These grants are intended to act in lieu of categorical grants that have traditionally been offered to federal acts such as the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and the Solid Waste Disposal Act.

EPA Policy Changes Can Affect State Service Delivery. The EPA has expressed the desire to give more program authority and responsibility to the individual states through the Five-Year Strategic Plan and through the National Environmental Performance Partnership Agreement. A major goal of the EPA is to alter not just funding mechanisms but the thinking behind the system. These changes offer the DEQ the opportunity to accept greater program authority and review its own service delivery system. Notwithstanding these anticipated changes, the EPA is and will continue to be the final authority on environmental issues.

The DEQ as an organization is modeled after the EPA's structure and is organized around the six core statutes that make up the body of U.S. environmental policy. As changes in EPA philosophy are manifested to the states, the state should identify areas in need of attention locally. Some areas where the DEQ may want to focus include: (1) creatively solving service delivery problems so that program delivery is efficient and suited to local needs; (2) redistributing resources including staff to meet the changing populations in the state; and (3) rethinking how best to render service delivery based on state priorities.

Balancing federal, state and local needs with department mission. The DEQ has been given the difficult task of balancing Utah's environmental interests with those of other organizations. We identified four areas where legislative clarification may be needed to eliminate conflict among DEQ, federal, local and business interests.

Management of Utah's Petroleum Storage Tank (PST) fund needs clarification. The fund was established with the primary purpose of meeting a federal requirement to ensure financial liability in the event of leaking petroleum tanks. However, money from the fund may be appropriated by the Legislature for other purposes and there are concerns that this practice may contribute to fund insolvency. In addition, soil sampling and analysis are not required of tank owners and operators prior to being admitted into the PST fund. A basic tenet of the law prohibits payment to remediate leaks that occurred before tanks were accepted into the fund. Without soil sampling it is often impossible to determine when a leak occurred. The Legislature should consider whether the current practices related to the PST fund are in the best interest of the state and the Underground Storage Tank (UST) program.

Authority and responsibility for the vehicle emission testing program are divided. Currently, Utah is under pressure from the EPA to implement an Enhanced Inspection and Maintenance (EIM) program. The Utah State Legislature granted authority to county governments to allow them to decide whether or not to pursue EIM implementation or find another viable alternative. Thus, the DEQ's role has been one of technical support to the counties because the DEQ has no formal authority to implement the program. The DEQ is, however, still responsible for the program and though not legally bound needs to include EIM in both the federally required state implementation plans and the state's Conformity Plan with the Utah Department of Transportation (UDOT) to protect federal program funding. Legislative action may be necessary to straighten out the confusion in the management of the EIM program and prevent possible loss of federal funding.

The need for a state air quality testing and research center is questionable. The Division of Air Quality would like to focus on the maintenance aspects of EIM with a mechanics' training center at Weber State University. In addition to this, Air Quality wants to develop a research facility to pursue vehicle emissions research. These ventures combined would cost upwards of $4 million. Mechanic training may be a worthy goal but it is unclear how it fits with existing department priorities. However, establishing a state testing facility would be costly and redundant with current EPA research efforts. These two initiatives should be reviewed and prioritized with other department goals.

We found additional conflicts in some legislation related to Solid and Hazardous Waste issues. One apparent conflict appears where Utah law is less stringent than federal law regarding the classification of certain types of solid waste and hazardous wastes. A second and related conflict arises from legislative inconsistencies dealing with federally-classified solid waste products that are classified as hazardous by some states, but not by Utah. Finally, Utah state law does not grant the DEQ the authority to accomplish remediation of hazardous waste sites in the state.

Chapter I
Introduction

The Utah Department of Environmental Quality (DEQ) has grown substantially since 1990 when it developed from a state division into a full-fledged department. This transition, including growth in budget and increases in agency staff, has primarily been in response to national Environmental Protection Agency (EPA) directives. The EPA mandates many of the state environmental programs as well as provides a large share of funding for those programs. As the EPA has expanded existing programs and added new requirements, the department has grown out of necessity to accommodate those changes. However, there are indications that federal funding to the states will decrease in the future signaling a new trend for environmental regulation to which the states will have to adjust.

The EPA is undergoing philosophical changes that will affect the DEQ in both funding and program administration. EPA control over DEQ programs is diminishing, which will increase the amount of control the states have over programs and will force states to rely less on federal funding. In response to this, the DEQ needs to prepare both financially and organizationally to meet future program needs within the changing environment. Under this new philosophy, the states have more discretion and flexibility in implementing programs, however, the states will also be held accountable for their program requirements and outcomes. Currently the EPA bears ultimate responsibility for programs. States will have the responsibility of implementing and directing programs to ensure effective service delivery and will have control over the level of service delivery. In anticipation of these changes, the DEQ will need to address the issues of department direction, program priorities, service delivery mechanisms, and funding sources as program emphasis shifts from federal to state control.

State Environmental Programming is Driven by EPA

Environmental programming is driven by federal EPA programs and their accompanying funding. There are six federal environmental control acts from which programs are developed. These acts have expanded in response to increased concern over environmental conditions in the U.S. and, as a result, state environmental agencies have grown. States are required to implement these programs and as such rely heavily on accompanying federal funds, combined with state general funds and dedicated credits from fees and fines, to finance the programs. However, while the EPA is active in determining what programs should be instituted, the EPA's share of funding is decreasing and is projected to decrease further.

The last 5 years have been an important transitory period for the Department of Environmental Quality. The DEQ has grown from a division of the Department of Health to a fully independent department employing over 400 people and managing a budget in excess of $40 million. More specifically, since 1990 DEQ staff increased from 243 to 427 and in this same period the total departmental budget increased from $19.1 million to $43.3 million. This

growth, although dramatic, is directly attributable to programs required by increased state and federal activity in environmental legislation. Agency growth has been realized during a time when downsizing bureaucracy in both size and scope of authority is a goal on both state and national levels. The department has, however, found it necessary to grow in order to keep up with the growth of federal environmental programming requirements.

National Environmental Policy Is Changing

While the DEQ has changed its status and realized rapid growth over the last 5 years there are proposed changes at the federal level that will also affect the department. First, the EPA anticipates significant reductions in federal funding. The states will pay a larger share either from state general funds or in the form of dedicated credits. Second, in conjunction with funding reductions, the EPA plans to allow greater flexibility in developing state performance plans and greater levels of state control via block grant funding.

This rethinking of EPA service delivery is an attempt by the federal government to lower its cost of operations. These changes in EPA philosophy are already being realized through programs that are funded and operate from fee and fine collections. In addition, the anticipated block grants will allow the states more flexibility in funding programs that encompass environmental protection of all types at a given location, called a multi-media program by the EPA, rather than just addressing the single components of air, water, or hazardous wastes. Block grant funding should also allow states to develop programs specifically suited for their individual needs. The greater flexibility afforded the states means that states will need to be creative in their performance plans to get the most from their funding. This creativity will likely emphasize risk analysis as a tool for crafting environmental policy.

EPA decisions to modify program accountability, responsibility, and funding will have a profound effect on how programs are administered at the state level. These changes signal an important transitional period for the DEQ. The department and Legislature will need to clarify the scope and direction of the agency, as well as streamline funding sources in order to meet requirements and provide environmental services. The challenge will be to prioritize programs in what the EPA calls a multi-media approach that addresses problems as a whole rather than as components and allocate funds accordingly. For this reason, the department will need to provide a general direction for the divisions to follow in their programming to ensure that highly prioritized programs are not compromised.

Utah Needs to Prepare for Future Program Changes

As change of direction occurs at the national level, the state should prepare to make adjustments in environmental programming and administration. Most important in preparing for federal program organizational and funding changes is the consideration of priorities important to Utah. The department will need to have a clear understanding of legislative intent in order to establish priorities and fit those priorities into an organizational framework built on

the needs of federal, state and local government. State leaders have the opportunity to anticipate the expected changes and provide direction to the DEQ. Rethinking environmental programming, using a state and local perspective, would help to maintain programs that are most needed in Utah. Also, DEQ management will need to ensure that effective service is provided to the entire state.

The DEQ may have an opportunity to improve local environmental conditions through the increased program flexibility planned in the EPA's future. This planned increase in the EPA's flexibility should provide state leadership and the DEQ an opportunity to design programs better suited for the state. The DEQ should consider ways of accommodating local areas by working to improve environmental service delivery and including local government officials and members of the regulated communities in determining departmental priorities. Currently, the DEQ has a centralized staff organization that may not be adequate to accommodate local needs under increased state responsibility and accountability. State leadership and the department should consider alternative ways of organizing staff to more efficiently and effectively serve the local communities. A more decentralized staffing structure and increased decision-making capabilities at the local level could increase service delivery effectiveness and help set state specific priorities. The DEQ should resist falling into a similar situation with local governments that the EPA has with the states. That is, the DEQ should take steps to include local interests and concerns in environmental programming as much as possible and allow some flexibility at the local level.

Policy Clarification from Legislature and Department Is Needed

Some program elements within the DEQ need policy clarifications in order to focus them in the direction the Legislature intends. Authority over some programs is unclear and confusion over roles and responsibility is also evident. With the anticipation of increased state discretion over programs and program development, the state, including the Legislature and the department, should take an active role in defining the operational boundaries for these and other programs. Outlining the boundaries would ensure that the general focus and mission of the department is unmistakable. In addition, this would facilitate the changes that are taking place on the federal level by allowing the department to determine where programs should be directed and how they should be prioritized on a department level. Further defining the direction of the department through mission modification and/or expansion would allow the DEQ to better manage program funding and organizational structure in a time of increasing state control and discretion over programs.

Audit Scope and Objective

This audit was requested by the Legislative Process Committee to serve as part of that committee's in-depth budget review of the Department of Environmental Quality. As such, the audit is not a comprehensive review of the department's many environmental programs nor does it attempt to evaluate either the effectiveness or efficiency of any individual program. Rather, we have conducted a general survey of the department's organizational structure, funding sources, and overall effectiveness in responding to current and proposed federal and state environmental legislation. However, some areas and programs were reviewed in more detail at the request of individual legislators. The audit addresses the following issues:

1. The Department of Environmental Quality is, in large part, governed by EPA programs. The demands of those programs has driven the rapid growth of the department over the last 5 years.

2. Anticipated policy changes at the national level should have an effect on Department of Environmental Quality program operations.

3. The DEQ is faced with the difficult task of balancing state environmental needs with the often conflicting needs of federal and local governments.

Chapter II
State Program Growth is a Result of Federal Involvement

Utah's Department of Environmental Quality (DEQ) programming is driven by federal EPA regulations and funding. As the EPA has increased state requirements and programs, the states have experienced marked growth in response. The DEQ's staff and budget have grown considerably since 1990, and our review of the department has found that much of the growth questioned by Legislators is directly related to EPA program demands. During this same time the DEQ separated from the Department of Health where it was a division and became a full-fledged department. In tandem, these two significant events have dramatically changed the size and structure of the DEQ.

Despite these changes, Utah has been successful in administering federally required programs as well as state optional programs. Overall, EPA Region 8 officials are pleased with the performance of Utah's Department of Environmental Quality and the programs for which they have been delegated authority. Officials at the EPA praised the state for the DEQ's tenacity and performance in program administration. They feel that the DEQ works and fights for the state to improve the programs for Utah. They suggested that Utah, in contrast to some other states in the region, is in control of its programs and noted that there are no major problems with the administration of any program.

There are, however, changes taking place on the federal level that will affect funding to the states in the future. Currently, a large share of funding for environmental programs comes from the federal government. States have come to rely on this funding but current trends and directives from the EPA suggest that federal funding will become more scarce, requiring states to rely more on state general funds and funds derived from program specific fees, called dedicated credits. States will have to be more creative in the way programs are funded in order to continue to meet regulations to the satisfaction of the EPA and to adequately provide services to the state.

Staff and Budget Have Experienced Significant Growth

In the past 5 years, the EPA has expanded existing programs and added new programs to state requirements, contributing to the growth of environmental staff in all states. The states must comply with EPA regulations by administering required programs, both new and existing, because failure to meet federal requirements would mean economic sanctions against the state and the possibility of more strict EPA administered programs being implemented.

This possibility of sanctions being the case, much of the state's staff and budget growth is tied to EPA requirements.

DEQ Staff Has Grown in Response to EPA Mandates

DEQ has experienced dramatic growth in response to increasing EPA requirements as well as to its transition from a division of the Department of Health to a full-fledged department. Staff size is measured in full-time equivalent employees (FTEs) working for the department. DEQ staff increased from 243 FTEs to 427 FTEs between 1990 and 1995, an increase of 184 FTEs, or almost 76% overall. This significant growth represents operational staff increases that are largely attributed to expanded and new federal and state programs. Figure I shows the steady growth of all departmental staff over the last 5 fiscal years.

Figure I
Total Departmental Growth 1990 to 1995
(Authorized FTEs)

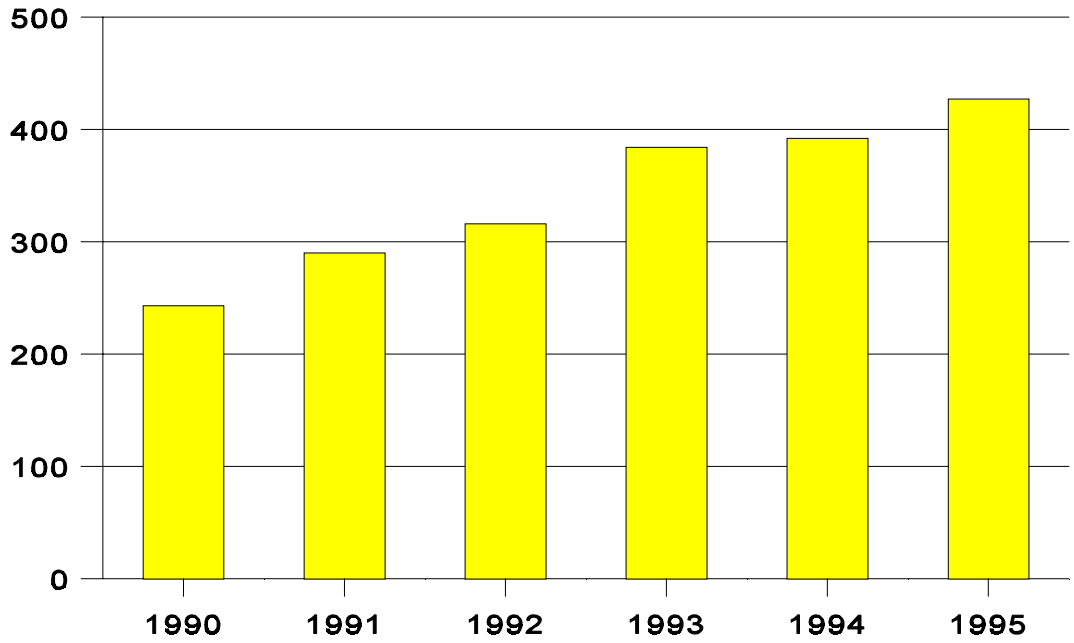


Figure I also shows that most of the department's growth occurred from 1990 to 1993 and that there has been a leveling of departmental growth over the last three years. Current information indicates the leveling will continue and that there will be no growth in 1996. Some divisions have experienced significant growth because of EPA program requirements.

The Divisions of Air Quality, Environmental Response and Remediation and Solid and Hazardous Waste realized the most dramatic increases of staff since 1990, as seen in Figure II. In response to increasing division staff growth, administration and support services staff expanded as well.

Figure II
DEQ Growth 1990 to 1995
(Authorized FTEs)

	FY90	FY91	FY92	FY93	FY94	FY95	Growth
Administration	17	13	28	35	36	35	105%
Air Quality	54	61	70	92	107	124	131%
Drinking Water	24	25	22	23	26	26	6%
Env. R and R	42	55	62	79	83	86	104%
Rad. Control	17	17	16	19	22	20	17%
S and H Waste	36	53	53	68	51	69	93%
Water Quality	54	66	65	69	68	68	27%
Depart. Total	243	290	316	384	392	427	76%

The Division of Air Quality (DAQ) has experienced the most significant growth in FTEs. This division grew from 54 FTEs in fiscal year 1990 to 124 FTEs in fiscal year 1995. Sixty-one percent of Air Quality's staff work on federal programs, 36% of staff are associated with federally mandated programs that allow some state discretion and utilize dedicated funds, and only 2% of staff are dedicated to state programs. New requirements under the Clean Air Act Amendments, including the recently approved Operating Permits Program, account for 56% of the new FTEs since fiscal year 1990.

The Division of Environmental Response and Remediation (DERR) has experienced continuous growth. In fiscal year 1990 as a bureau of Solid and Hazardous Waste, there were 42 FTEs. In fiscal year 1991 they achieved division status, and as of fiscal year 1995 they have grown to 86 FTEs. Regarding division growth, the superfund program is responsible for 23 FTEs, as it received additional funds from the federal government. Another 14 FTEs were paid for by dedicated credits from the Petroleum Storage Tank fund for operating the Underground Storage Tank program which is also federally mandated. Four more FTEs were funded by state general funds, three of which were appropriated for the superfund program and

were derived from state matching funds. State matching funds are required by the federal government in the superfund program and are appropriated from the state general fund. States must currently match 10% of the federal appropriation on each project. In fiscal year 1994 the Underground Storage Tank and superfund programs accounted for over $10 million of federal funding. That compares to only $1.5 million for the same programs in fiscal year 1990.

In fiscal year 1990, there were 35.5 FTEs in the Division of Solid and Hazardous Waste (DSHW). This number grew to 68.8 FTEs by fiscal year 1995 for an increase of 94%. The DSHW experienced fluctuating growth and during the period from 1990 through 1995, due almost exclusively to increasing and decreasing waste collections and associated fees.

Administration and support staff have grown as operational staff needs have increased and as a result of the change to department status. Since 1990, the Executive Director's Office has increased by about 105%. Creating a new department required transferring some staff from support branches of the Health Department that were already dedicated to the DEQ. Most of these positions were for human resources, accounting and budget, and public relations positions. In addition, support staff within the administration and the operating divisions also grew in response to the growth of operational staff. Very little of the funding for this additional administrative staff came from the general fund, most came from federal program overhead accounts.

Operating Budget has Increased Significantly

In addition to the growth in FTEs, the DEQ has experienced significant budget growth. Between the period from fiscal year 1990 to fiscal year 1994, the department budget grew by 56%, increasing from approximately $19 million to over $43 million. The growth in budget as a percentage is considerably less than the 76% growth in FTEs we reported above.

State programs and the management of those programs rely on federal, state general fund, and dedicated credits, which are derived from fees. With the exception of specific construction appropriations and pass-through funds, the trend shows that while the EPA is active in determining what programs should be instituted, federal funding is decreasing. This trend means that program operation and maintenance will progressively require more funding from sources other than federal appropriations.

Comparatively, other state agencies during the same time experienced only a 25% growth rate. The DEQ's growth rate appears to be a result of the state option programs, most notably Utah's hazardous waste sites, which must still meet federal requirements. While this growth rate accurately depicts the department's budget inclusive of funding funneled through the DEQ for other organizations, it does not accurately portray the cost of operating the department. At this operating level the department is dependent on new sources of funding to sustain its growth.

We reviewed the department's budget and programs more closely to determine the source of funding and reasons for growth. We first looked at funding, which is categorized into three sources: general funds from the state, federal funds controlled by EPA, and "other funding", which includes among other things restricted funds and dedicated credits from the collection of fees.

Federal funding increases accounted for the greatest dollar amount increase for the period from fiscal year 1990 through 1994. In 1990, federal funding to the department was just over $10 million, over 53% of the total budget. By 1994, federal funding had increased to almost $29 million, or nearly 67% of the total budget. During this period, large amounts of federal funding were appropriated to the state as funding that is passed through the depar- ment and earmarked for special programs or projects outside the normal operations of the department. In fact, growth in federal funding is attributable primarily to pass-through funding.

Pass-through funding is federal money earmarked for specific projects where the department acts as caretaker of the funds. Pass-through money in fiscal year 1994 accounted for over $21 million of the total $28.8 million federal fund appropriation. Typically in Utah, pass-through money is appropriated by the federal government for use in water quality projects in local communities or for contract services related to remediation of hazardous waste sites in the superfund program. As an example of where pass-through money is spent, in fiscal year 1996, $18 million will pass-through the Division of Water Quality for building or repairing wastewater facilities in several communities of the state. Another $18 million will pass-through the Division of Environmental Response and Remediation for contract services in the Sharon Steel and Portland Cement superfund projects. A small amount of pass-through money is retained by the department to assist in administering the programs for which the money is appropriated, but that amount is relatively inconsequential.

Figure III shows the departmental operating budget, minus pass-through money, by source, for fiscal years 1990 through 1994. At the time of this report, budget figures for fiscal year 1995 were not available.

Figure III
DEQ Operating Budgets Less Pass-through Funds
Fiscal year 1990 through 1994*

Fund Type	1990	1991	1992	1993	1994
General	$7,400,000	$7,274,000	$7,300,000	$7,627,000	$8,522,000
Federal	5,778,000	5,084,000	7,878,000	5,853,000	7,340,000
Other	1,514,000	2,542,000	4,099,000	4,675,000	5,940,000
Total	$14,691,000	$14,900,000	$19,277,000	$18,155,000	$21,802,000

* *Fiscal year 1995 budget information was not available at time of printing.*

When federal pass-through money is discounted, the usable operating budget of the department is reduced significantly. We consider the operating budget as being the amount of money appropriated or otherwise available to the department wherein some discretion may be applied in the use of that money. In fact, when discounting pass-through money, total budget growth for the department from fiscal year 1990 through 1994 was about 33% compared to 56% when including those funds. For example, in 1990 federal funds totaled $10 million with $5.8 million of that amount in the operating budget. In 1994, federal funds totaled almost $29 million, but when discounting pass-through money, the operating budget included only $7 million. Federal funding for operational purposes grew only about $1.2 million over that period, thus highlighting the importance of the "other funding" sources as a means of financing programs within the department.

Even though the department has experienced unusual growth, that growth is attributable to funding from sources other than general funds appropriated by the Legislature. With the exception of 1994, state general funding has been fairly constant. The rise in 1994 is due to the superfund program where the state needed to contribute matching funds to get the large increase in federal funds that year. In fact, general funding as a percentage of the department's total budget has steadily decreased from about 39% in fiscal year 1990 to only 19.7% in fiscal year 1994. This indicates that growth in the DEQ budget is not from the general fund.

EPA and State Program Requirements are Primary Reason for Growth

Growth in the DEQ staff and budget are in response to increasing EPA program requirements. Environmental programming in the state is governed by six federal environmental control acts, state programs, and amendments to existing federal programs.

Growth in the department has been propelled by these requirements, as well as by achieving department status.

Growth is a Result of Expanding Federal Requirements

The growth that the DEQ has experienced in the past 5 years is primarily in response to federal program growth. Environmental programming has proliferated on the federal level which has acted as a catalyst to state environmental legislation and program development. Figure IV lists federal legislation controlling environmental activities. Also included is the corresponding Utah legislation governing Utah's effort to carry out federal programs. Often federal programs are accompanied by staffing requirements that states must abide by in order to gain state authority or primacy over the program. In addition, the states risk penalty of economic sanctions if they do not implement federal requirements.

Figure IV
Federal and State Environmental Control Acts

	Federal	State*
Air Quality	Clean Air Act, Asbestos Hazard Emergency Response Act	Air Conservation Act 19-2
Drinking Water	Safe Drinking Water Act	Safe Drinking Water Act 19-4
ERR	Comprehensive Environmental Compensation and Liability Act (CERCLA), RCRA, Subtitle I, Toxic Substance Control Act	Hazardous Substance Mitigation Act 19-6-301, Underground Storage Tank Act 19-6-401
Radiation	Atomic Energy Act, Low Level Radioactive Waste Disposal Act, Uranium Mill Tailings Act	Radiation Control Act 19-3
Solid and Hazardous Waste	Resource Conservation and Recovery Act (RCRA)	Solid and Hazardous Waste Act 19-6, Waste Tire Recycling Act 26-32a
Water Quality	Clean Water Act	Water Quality Act 19-5

** Numbers represent statutory references*

Each federal act shown in Figure IV establishes regulations governing a variety of pollution control and prevention programs. The operational arm of the system comes from the state acts that design and implement the programs to carry out the regulations. The following are examples of federally required programs that have contributed to the growth of the DEQ. These programs are not all encompassing but demonstrate the influence of federal policy and regulation on the state level.

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or superfund program, is a federally funded and administered program wherein the state performs certain activities as the agent of the EPA. The purpose of the superfund program is to investigate abandoned or uncontrolled sites that are contaminated with hazardous substances that pose a threat to human health or the environment. The superfund is not a state delegated program, therefore the EPA retains authority and directs the state's role in all superfund projects.

The recently approved Operating Permits Programs (OPP) is a federally mandated state program required by the Clean Air Act Amendments of 1990, and was approved by the EPA in June of 1995. The program is designed to identify and regulate all stationary sources or air emissions. It is a refinement of past programs because it addresses a greater number of sources and streamlines the permitting process by writing a comprehensive permit for compliance inspectors who can then more consistently regulate stationary pollution sources. In addition to OPP, an ancillary program called the Small Business Assistance Program is now required to assist businesses in adjusting to the new permitting process. This program aids stationary sources in achieving technical and environmental compliance with state and federal pollution laws.

Federal funding growth in the Division of Water Quality is attributable to numerous projects under the Clean Lakes Program and the water loan program, also known as the State Revolving Fund. This latter program accounted for $11 million of the $13.6 million appropriated by the federal government for the department's water quality program in fiscal year 1994.

New State Programs Have Been Implemented

The state Legislature has also required the DEQ to develop some state-specific programs. State programs, as a general rule, must at least meet EPA requirements, but may be more strict if there is cause. Given the current environmental conditions in the state, the Legislature has funded some programs that are specific to Utah needs and concerns in environmental quality. Other programs are optional but have federal requirements attached, should states decide to implement the program. Other programs are not covered by federal rules but have been appropriated money by the state Legislature to deal with specific environmental conditions in the state.

Utah's Underground Storage Tank Program (UST) is an example of a state program that is governed jointly by state and EPA regulations. Approved by the EPA in 1994, the program was designed to be parallel with the federal UST program and regulates both petroleum and hazardous substance underground storage tanks. The program is multi-faceted but deals primarily with commercial petroleum outlets. A multi-million dollar restricted fund was approved by the Legislature to provide financial assurance in the event of leaking tanks. In addition to administering the fund, the program requires additional significant administrative support to oversee the certification and registration of tanks, new installations, closures and inspections.

The Utah State Legislature appropriated $500,000 in fiscal year 1994 for the Urban Airshed Model program. This program will set up a dispersion model of the urban airshed and will identify from where ozone problems stem. This program projects anticipated pollution changes and thus provides information to the DAQ concerning air quality in advance, hoping to prevent air pollution health hazards before they reach the population. This project is ongoing and should be completed in the fall of 1995.

Some Utah programs have been created in anticipation of EPA actions. In 1988 new regulations affecting municipal solid waste landfills were proposed by the EPA. The new standards affected all aspects of landfill operations including site location, operations, design, groundwater monitoring, corrective action, closure and financial assurance. Although only proposed at the time, these significant new regulations would inevitably effect solid waste management in Utah. Therefore, in 1990 steps were taken through legislative action that mandated each county and the state to develop a solid waste management plan and to provide funding for the development of the plans. The Utah Solid Waste Management Plan was derived from the various local plans as well as other legislative action related to solid waste management.

State Needs to Anticipate Federal Funding Changes

Federal funding is expected to decrease, as has already been seen in some state programs. The EPA is attempting to shift funding emphasis away from federal money and focus more on state and other funding sources. As this happens, the state should anticipate this change and look for ways to fund new and existing environmental programs. This should include using fees and other collections to cover program costs, as well as state general funding. Finally, the EPA plans to offer the state general block grants instead of program-specific grants. This will allow states flexibility in funding multi-media programs which are programs covering more than one environmental area. An example of this would be a program that may involve water quality, hazardous waste cleanup and environmental response capabilities. Funding through block grants could potentially be a more efficient way to finance environmental programs.

Federal Funds are Decreasing

The EPA Five-Year Plan indicates that states should rely less on federal funding for environmental programs in the future. This shift from federal to state funding sources could potentially hurt programs if the state does not anticipate these changes and plan accordingly. Federal funding as a percentage of the total DEQ budget has decreased in the past 5 years. This trend is projected to continue as the EPA turns more control of environmental programs over to the states.

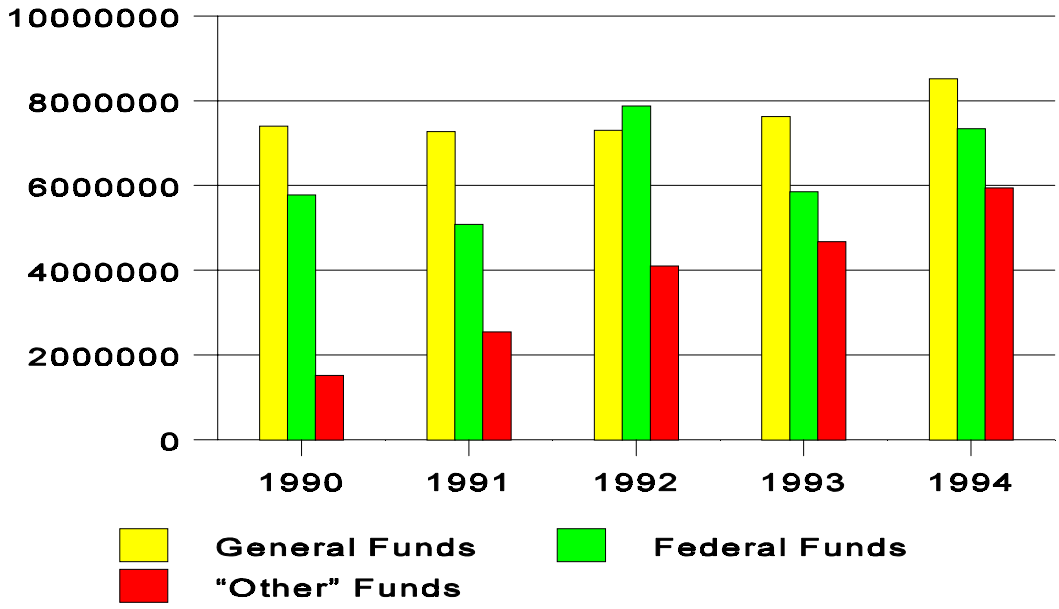
The programs that may be in for the most difficult time if funding is reduced further are those that were the first to be implemented. Water Quality is Utah's oldest pollution control and monitoring program. The program has endured declining federal funding for a number of years even though population growth in Utah and the obsolescence of treatment plants has not reduced demand. The EPA has continued its presence in water quality issues by expanding the scope of the Water Quality Act but has not kept up funding. An example of problem created by expanding a program and cutting funding is the DWQ's loan program. The loan program is growing but federal funding cutbacks will result in the termination of DWQ administrative funds. The DWQ will be left trying to find a new funding mechanism for an on-going program. From a funding perspective, water pollution programs are now the lowest EPA priority.

Funding has remained at a near constant level, yet each year the EPA charges the Division of Drinking Water with testing for greater numbers of toxins in drinking water supplies. The programs under Drinking Water are delegated to the state as a package and any infraction in the administration of the programs could affect funding for the entire division. In all likelihood, the EPA will be pushing a greater portion of the responsibility for funding onto state-based revolving loans for water programs.

Utah Should Look at Alternative Funding Options

As federal funding support wanes, the state should concentrate on creative ways to finance environmental programs. More emphasis will inevitably be placed on general funds, which will be required to support more programs. In addition, other funding sources such as dedicated credits (i.e., fees and collections) should be utilized, where applicable, to support new and existing programs. Figure V shows the percentage of DEQ budget contribution by source.

Figure V
DEQ Funding Source Contribution



As Figure V shows, growth in other sources of funding has increased by over 74% since fiscal year 1990, growing from approximately $1.5 million to $5.9 million. The relative amount of money derived from this source is significantly less than that attributable to federal funds when considering pass-through money. Yet, when pass-through funding is removed the growing importance of other funding, primarily in the form of dedicated fee credits, is obvious. Other sources have historically been less than that appropriated from the general fund, although the margin of difference is shrinking. For instance, during the period of fiscal year 1990 through 1994 the department averaged only $3.7 million from other credits whereas federal funding averaged $15.5 million and revenues from the general fund averaged $7.6 million.

Some programs are already funded through dedicated credits, partly in response to EPA requirements that certain programs be self-sustaining. For example, the Division of Air Quality since fiscal year 1990 has increased dedicated credits by 75% which has allowed general fund revenues to remain at a fairly constant amount. Significantly, 83% of the Air Quality dedicated credits come from a single program, the Operating Permits Program (OPP). This program is self-sustaining in that pollution sources must pay $21.70 per ton of emitted pollutant. These collected fees are then appropriated back into the program budget. The fees collected pay for direct and indirect costs of the program. Similarly, in the Division of Solid

and Hazardous Waste, dedicated credits resulting from permits and other fees related to waste disposal increased from less than $.5 million in fiscal year 1990 to over $2 million in fiscal year 1994. During that period, 21 FTE's were funded from those collections.

EPA Block Grants Will Give States More Control of Funding

EPA funding to the states will be more general in nature, allowing states to apply funding, to some degree, where states believe funding is needed. Currently, the EPA offers program-specific grants that often have restrictions on use. Block grants would give more control to the states so that money is spent where it is needed and not necessarily where the EPA directs it.

These grants are intended to be in lieu of categorical grants that have traditionally been offered to federal acts such as the Clean Air Act, Clean Water Act, Safe Drinking Water Act, and the Solid Waste Disposal Act. In essence, these block grants are intended to allow states to rethink how they are delivering environmental services. No longer would funds be tied exclusively to a specific program in a division. Rather, the proposed approach would allow the states to apply the funding as they best see fit, provided that the basic elements of the various categorical programs are not neglected. One stated reason for this change is to encourage a multi-media approach to the delivery of services. This could reduce what EPA calls "fragmented federal assistance" and enable states to "coordinate and integrate activities while targeting resources at pollution prevention, multi-media activities, and their (the state's) highest environmental priorities."

Recommendations:

1. We recommend that the DEQ review individual programs to determine if alternative funding options exist.

2. We recommend that the DEQ begin prioritization of programs throughout the department to prepare for block funding.

3. We recommend that federal pass-through money be clearly identified in the department and division budgets to more accurately identify operating budgets.

Chapter III
EPA Policy Changes can Affect State Service Delivery

In recently published documents, the Environmental Protection Agency (EPA) has indicated that more authority and responsibility over environmental policy will be given to the states in the future. Currently, the EPA grants the states some level of autonomy and program control by delegating specific programs to the states. States are delegated authority over programs, by written agreement, and must operate their programs in a manner acceptable to the EPA. Under the EPA's new perspective, the states will have more discretion over program priorities and the distribution of resources associated with programs. For instance, as mentioned in Chapter II, block grants will be made available with fewer restrictions on their use. This will enable states to design multi-media programs to address broad issues that might not be feasible under the current system. That is to say, these programs would not be constrained by traditional divisional boundaries and thus would be more comprehensive.

In addition to this new funding scheme, states may have more authority over program design. This may afford opportunities for states to focus on their own priorities and the environmental issues that affect them. The EPA plans to focus more on pollution prevention rather than enforcement and address problems at the source rather than create national policy that is not location specific. Foremost, the EPA plans to revise all environmental legislation in an effort to address pollution problems comprehensively rather than symptomatically. All of these actions will directly affect state programming.

Notwithstanding these anticipated changes, the EPA is and will continue to be the final authority on environmental issues. The EPA has traditionally operated under a "command and control" system that has allowed the federal government to dictate all facets of the nation's environmental programs and enforce environmental standards by which programs are measured. States are allowed to administer some EPA programs and have found that the most expeditious way to accomplish this is to adopt the EPA's style and structure. In effect, state agencies have traditionally been extensions of the EPA. However, at times federal goals have been at odds with individual states goals. Nevertheless, the EPA has maintained control of environmental programs and agendas; the EPA's intent, however is to give states more authority and responsibility. In anticipation of these changes at the federal level, the state has a unique opportunity to influence environmental policy on the state and local level.

New EPA Philosophy May Give States More Control

The EPA has expressed the desire to give more program authority and responsibility to the individual states. This shift in control is outlined in the EPA's Five-Year Strategic Plan called "The New Generation of Environmental Protection." This plan is the first step in the planning process that will continue to evolve and adapt to political and economic changes on the federal level. The EPA hopes that the 5-year plan will guide planning, resource allocation and decision making processes and set the direction for changes that will define the environmental agenda in the future.

In 1993, the EPA established a State/EPA Capacity Steering Committee with the agenda of improving the relationship between federal and state agencies. This committee was instrumental in developing the National Environmental Performance Partnership System which produced an agreement between the states and the EPA which was signed in May of this year. This agreement, although only a preliminary draft of changes scheduled to take place, addresses the relationship between the EPA and the states. It lays out goals which include giving the states more discretion over programs. The system is designed to strengthen the roles of the public and the state by including them in the development of programs, instead of the EPA handing down prescriptive programs. The system also emphasizes measuring performance or outcomes instead of measuring process indicators (i.e., numbers of permits issued and inspections completed).

A major goal of the EPA strategic 5-year plan is to alter not just the funding mechanism but the thinking behind the system. The EPA is trying to look at its work in its entirety rather than using the compartmentalized approach for environmental programs it has taken in the past. EPA Region 8, which has authority over Utah, is realigning its management and staff in anticipation of future events. Already the region has redistributed its staff to take advantage of the multi-media, cross-program approach outlined in the plan. This organizational structure may be more capable of overseeing funding if it is turned over to the states in a block rather than a large number of program-specific grants, as mentioned in Chapter II of this report. Performance partnership grants would be provided to the states, through the EPA Regional Office, at the request of the Governor for comprehensive or single media pollution prevention, control and abatement.

These changes offer the DEQ the opportunity to accept greater program authority and review its own service delivery system. Under the new EPA philosophy, states would be encouraged to be the primary delivery agent of environmental services and manage their own programs that have been adapted to local conditions. The envisioned role of the EPA, among other responsibilities, is to "ensure good science and strong national health and environmental standards." The DEQ, with greater responsibility and matching authority, could take the opportunity afforded by the EPA strategic plan to review its program priorities and service

delivery systems. In the past, federally mandated and controlled environmental programs priorities have not matched Utah's specific needs, nor have services been delivered as effectively as the DEQ or its customers would like. State implementation of federal programs has contributed to occasional conflicts between local health departments, district engineers, members of the regulated industry and the DEQ. Regardless of changes that may come about through changing EPA strategies or policies, the department should take this opportunity to review its own organizational structure, performance, and service delivery.

DEQ has an Opportunity to Respond to State and Local Needs

The DEQ as an organization is modeled after the EPA's structure and is organized around the six core statutes that make up the body of U.S. environmental policy. That is, the DEQ's organization is media based, meaning that each division deals with a different environmental element such as air, water, solid waste or toxic waste. Under strict EPA control, this organization has been generally successful in operating and administering programs for the state. However, with the anticipated changes at the EPA, there is an opportunity for the DEQ to reevaluate service delivery and organizational structure. As a part of this evaluation, the DEQ should consider state priorities and local concerns, especially now that making constructive changes in state environmental policy is being encouraged. The DEQ is charged with delivering environmental services (i.e., program outcomes and assistance in environmental issues) to the state in an efficient and effective manner. The mechanism for delivering these programs and assistance is often the local health departments, and more recently, DEQ's district engineers who are in position to better deliver some programs.

The EPA intends that states be granted more authority and responsibility, which provides an opportunity to assess and address local concerns. Some areas where the DEQ may want to focus are creatively solving service delivery problems so that program delivery is efficient and suited to local needs, redistributing resources including staff to meet the changing populations in the state, and rethinking how best to render service delivery based on state priorities. Assessing these elements of service delivery could help in defining the real sources of environmental problems in the state so that the DEQ can target them. These are a few of the concerns expressed by members of the regulated community, DEQ staff, and local officials.

DEQ Should Meet Local Concerns as They Fit With State Priorities

As changes in EPA philosophy are manifested to the states, the state should identify areas in need of attention locally. Although the EPA is generally pleased with service delivery in Utah, there are nonetheless some shortcomings. Issues regarding timeliness of action, communication, coordination, accessibility, adaptability and the need for localized decision-making authority are common concerns with DEQ district engineers, local health agencies, and

members of the regulated industry. The state has the opportunity to transfer more authority and responsibility, as well as decision-making, to regional areas which could, in the opinion of some, improve delivery of environmental services. In addition, roles need to be further defined so that authority and responsibility are clear and regulated customers are effectively served.

As the DEQ examines potential reorganization, one option is to consider delegating decision-making authority away from the central office to regional locations. An organizational structure with adequate personnel assigned to regional areas, with appropriate authority and responsibility, would more effectively serve the areas and customers. Other states in the western region have taken steps to decentralize their operations with the express purpose to provide better service delivery. In addition, other state agencies in Utah have maintained regional offices to provide better service delivery. This appears to be what former Governor Norman Bangerter envisioned for the Department of Environmental Quality when it was created in 1991, wherein he recommended establishing regional offices.

All of the district engineers and local health departments we spoke with expressed frustration over their lack of decision-making ability within their respective region. In addition, some expressed concern over how delivery of environmental services to the communities and individuals is affected because of this. For example, one district engineer stated that he had prepared a local drinking water permit for divisional approval. The district engineer believes he has a good working relationship with the director of Drinking Water and that his work is trusted and has never been questioned. In fact, all that remained to be accomplished in this particular case was to send the approval letter to the division director for signature. He commented that neither the division director nor his staff would see all the planning work and documentation that was accomplished until those documents were forwarded for microfilming and permanent filing, which is done about every 2 years. Still, the approval letter had to go through the formality and delays of getting the division director's signature.

The regulated community also expressed concerns over decision-making responsibilities. One rural customer stated his concern with inconsistencies in the application of policy and lack of responsiveness on the part of the DEQ. He complained to the district engineer in his region, who blamed the Salt Lake Office. When the customer discussed the issues with DEQ personnel in Salt Lake City, they indicated that it was a district engineer problem. District engineers have been located in some regions of the state as primary service delivery agents and, according to their job description, have the "general responsibility to coordinate and administer all environmental engineering issues within a specified region of the state." In fact, this is one source of conflict because district engineers deal with a broad spectrum of issues that cross divisional boundaries. Often, coordination is difficult because of the specialized nature of the divisions.

Distributing Resources to Meet State Needs

Local health departments assist in the delivery of the state's Environmental Service Delivery Plan and contract with the DEQ for specific services that they provide. More recently, the DEQ placed five district engineers in rural areas of the state to aid in the delivery of services. During the course of this audit, we met with eight of the state's 12 local health departments and all of the district engineers and found a consensus of opinion that service delivery is not meeting the needs of local communities. To them, the current state of service delivery equates to diminished service, confusion, duplicated efforts, and poor communication in the delivery of services. Collectively, the district engineers and local health departments have indicated that many functions performed by DEQ divisional staff may be more efficiently performed on a local level.

DEQ's service delivery has been a topic of discussion among DEQ management who have discussed further placement of personnel in statewide offices to better serve the entire state. Currently, division staff are required to travel extensively to perform compliance testing and inspections. As an example of the possible inefficiency of this practice, a large commercial landfill located a few miles from the office of a district engineer is regulated from Salt Lake, resulting in excessive and unnecessary travel by division staff. An engineer from Salt Lake City was and remains assigned as the project officer for the facility. Providing the appropriate authority and responsibility to regionally assigned personnel would result in more timely and efficiently provided services.

We talked with various city and health officials and other representatives of regulated industry who collectively expressed concerns with, what is in their opinion, "untimely" action. They attribute this problem to dealing with the department in Salt Lake City as opposed to dealing with the district engineer in their region. One official commented that he is unsure of the district engineers' role since he always deals with personnel from the divisions in Salt Lake City. Two of the officials suggested that having regional offices with local decision-making authority would serve the community far better than the existing practice. In their opinions, this alternative approach would provide better service to the community, more timely decisions and action, better relationships and improved communications. Those making the decisions and working on the issues, as residents of the community, would have a vested interest in timely action. As we heard opinions from customers and local officials, these themes prevailed; however we could not substantiate these claims and to that end have only reported what seem to be primary concerns.

Another local health department officer identified similar concerns regarding untimely action which he attributed to two factors. First, in his estimation, the department has become compartmentalized and too specialized. As the department has grown and become more and more specialized, the complaint is that it is more difficult to get responses and actions from DEQ staff. Second, and closely related to the first, is his impression that the department has become process oriented and that in some ways the department is not as focused on the

outcomes and purpose of the DEQ. This official's interaction has been solely with division personnel, as there is no district engineer assigned to the area. Likewise, regulated industry representatives expressed the opinion that the DEQ is often inaccessible and untimely in their actions.

The aforementioned situations are indicative of the general frustration expressed by district engineers and customers. District engineers believe they could be more effective in delivering some DEQ programs if they are better utilized and allowed greater interaction in the decision-making process. The engineers perceive feelings of animosity from the division directors who feel their authority and funding is being threatened. This perception may be accurate as division directors have had to fight for their funding through periods when funding was insufficient. They also have existed within an environment controlled by the EPA which has been fund use specific.

Division personnel based in Salt Lake, according to district engineers, are routinely in the rural areas doing work that could be done by the district engineers, or could be done from rural offices of the department, provided that sufficient personnel were assigned to those offices. Work performed out of Salt Lake would include sampling and monitoring, inspections, and even permit writing. However, they believe that division management would be hesitant to support this initiative.

Although many factors determine the degree to which decision-making is decentralized in an organization, experts in the field of management and public administration suggest that decentralization is advantageous. For example, David Osborne and Ted Gaebler in their book, **Reinventing Government,** list and elaborate on the following advantages that decentralized institutions have. According to the authors, decentralized organizations are more flexible, effective, and innovative. In addition, decentralized organizations generate a higher level of morale, commitment, and productivity among employees.

In addition, the National Academy of Public Administration recently published the results of an extensive study that was chartered by the Congress of the United States, entitled, **Setting Priorities, Getting Results: A New Direction For EPA**. Although the findings and recommendations of the study are aimed at the EPA, they can and should be considered appropriate for all levels of environmental agencies. The general finding states that what agencies need is "continued devolution of responsibility for administering environmental programs, and a serious attempt to integrate programs to combat pollution." Included in the study is a recommendation to transfer more responsibility and decision-making to the appropriate service provider. The state now has the opportunity to reorganize and should consider giving more control to local areas as the EPA has decided to do with the states.

Recommendations:

1. We recommend that the DEQ examine its service delivery system in an effort to maximize efficiency as federal programs change.

2. We recommend that the DEQ study and consider decentralization of programs and some decision-making ability to regional areas.

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Chapter IV
Balancing Federal, State, and Local Needs is a Difficult Mission

The Department of Environmental Quality (DEQ) has been given the difficult task of balancing Utah's environmental interests with those of other organizations. Title 19 of the **Utah Code**, The Environmental Quality Code, establishes the department as the guardians of Utah's environment, charging them to balance environmental protection issues and benefits against economic and industrial growth. At times, conflicts occur as DEQ tries to balance the interest of environmental protection and economic growth. We identified four programs where additional clarification may be needed to eliminate conflict between DEQ, federal, local, and business interests.

First, clarification is needed in management of the PST fund of the Underground Storage Tank program within the Division of Environmental Response and Remediation (DERR). There is conflicting interpretation over the use and sufficiency of the fund. Second, the implementation of an enhanced vehicle inspection and maintenance program has elements of program management distributed between the three levels of government, which makes program implementation difficult. The conflict between federal needs, state needs, and local needs in addition to the inconsistent assignment of duties by legislation will need to be resolved if this program is to succeed. Third, the Division of Air Quality desires to expand its operations by joining into a partnership with Weber State University for the development of a vehicle maintenance training and research center. Such a center may be inconsistent with the current mission of the department and may duplicate existing federal programs. Fourth, unclear legislation governing actions of the Division of Solid and Hazardous Waste (DSHW) has created conflict in waste classification requirements between Utah and other states in one case and Utah and the EPA in another. Utah law has created situations where waste is either classified at a lower health risk level than it is in other states or is left unclassified. Both are wastes that can be hazardous. In another case, state legislation does not grant the DEQ authority to do waste site remediation which may be desired in the future.

Management of Utah's PST Fund Needs Clarification

Utah's PST fund may be facing financial problems in the near future. The present management approach regarding Utah's Petroleum Storage Tank (PST) fund highlights existing conflicts between interacting parties. The Utah legislature created the PST fund as an insurance-like fund which fulfills a federal requirement for financial assurance. The assurance was deemed necessary because the cost of correcting leaking tanks is too high for many small

businesses. Federal guidance related to creating and administering an insurance-like fund, such as the PST fund, is intended to ensure that funds are available for future problems. Potential financial insolvency of the fund is in part due to a provision in Utah law that allows the Legislature to appropriate money from the PST fund for uses other than the primary purpose for which the fund was created.

Conflicting Agendas for PST Fund Use

The federal government agenda is developed around the objective of ensuring that environmental impact from leaking underground storage tanks would be minimized by strengthening tank design requirements and ensuring tank owners have the financial ability to remediate leaks that may occur. Although the federal government allows a "wide variety of financial assurance mechanisms" to be developed in meeting the federal requirement, if an insurance-like fund is proposed by a state, there are certain provisions that must be met in order to gain approval. One such provision is the requirement that fund assets "only and directly be used for corrective action and third party liability costs." It seems apparent that federal guidelines intend for insurance-like funds to be singular in purpose.

The PST Fund was created by Utah's Legislature for the purpose of meeting the financial liability clause in the federal underground storage tank (UST) program. The Legislature's goal was to establish a mechanism that would assist owners and operators in meeting the financial liability created by leaking storage tanks. This legislation was eventually amended to allow for "surplus funds," or monies in excess of $15 million, to be appropriated for other uses. In essence, this amendment created a secondary purpose which is a possible source of conflict when considering federal intent regarding insurance-like funds. Recognizing the funding need of the primary purpose, the surplus threshold amount was subsequently increased by the Legislature to $18 million, where it stands presently.

Under the second purpose, surplus funds may be appropriated to make UST loans to owners and operators, or for remediation of other sites which are not covered by the fund. The provision allowing surplus money to be appropriated from the PST fund is there in part to assist the customers by providing loans for upgrading their facilities or other use related to underground storage tank operations. This provision also enables remediation of leaking tanks that are not covered by the PST fund. To date, $6.8 million have been appropriated from the PST fund with $3.8 million going to non-eligible leak remediation and $3 million going for UST loans. Under this provision, responsible parties are not pursued to pay for site remediation as these sites are usually abandoned or responsible parties have no funds.

Appropriating Surplus Money may Lead to PST Fund Shortages

The use of the PST fund for purposes other than primary use of remediating leaks occurring in fund covered tanks may lead to a situation where fund assets may not be sufficient during periods of need. In this case, the fund would no longer be a viable means of ensuring

timely remediation of leaking tanks. At that point, the state would be faced with the financial and administrative problems of finding the resources to remediate leaking tanks covered by the fund and prioritizing remediation projects.

The State Risk Manager is responsible for determining if the fees established for maintaining the PST fund are sufficient to keep the fund actuarially sound and to make recommendations to the Legislature to increase fees when appropriate. To accomplish this task, the risk manager contracted with an actuary, who has produced several reports regarding the fund. Every study has raised concerns regarding the fiscal soundness of the fund, determining that, given the information that is presently available, the fund will go bankrupt within a few years. These studies have consistently recommended that surplus funds be held in the fund and not appropriated for other uses. Appropriately, the State Risk Manager petitioned the Legislature in 1994 to increase fees to offset the forecasts made by the actuary. By law, the only recourse open to the risk manager is to make such a recommendation. The State Auditor also addressed that issue as well as the concern over appropriating surplus money from the fund to the Governor in March 1994.

The data used in the actuarial studies predicting PST fund shortages are limited but gain credibility from the fact that federal standards for underground storage tanks will become more stringent after December 1998. With these higher standards for spill, overfill, and corrosion protection, the DEQ estimates that as many as 1,808 of the existing 5,049 tanks that are currently in the ground will not meet the new standard and will require some degree of upgrade or replacement. More to the point, the department anticipates as many as 600 potential sites will require remediation. Based on the limited historical information available, claims against the fund could be as high as $63,834,000. As of December of 1998, the department estimates fund revenues to reach $68,450,430, essentially enough to cover remediation costs assuming surplus funds are not appropriated for other purposes.

The actuarial studies also point out another potential, yet avoidable, source of financial drain on the PST fund. This concern is over the fact that soil sampling and analysis are not required of tank owners and operators prior to being admitted into the PST fund. According to the state risk manager, the original legislation dealing with the PST fund proposed that soil testing be required before admitting a tank into the fund to establish liability. According to the risk manager, the requirement was deleted from the legislation even though the actuarial report suggested it as a prudent safeguard. Now, the risk manager speculates that there may be claims against the fund for pre-existing conditions that must be paid because there is no way of determining when the leak occurred.

In order for tank owners and operators to be covered by the fund, they must have a valid certificate of compliance prior to fund membership. The initial certificate is issued once all fees have been paid and after the owner or operator successfully completes a “tank tightness test,” which is intended to determine that a tank is not leaking. The basic tenet of the program

is that leaks that occurred before a tank owner or operator is admitted into the fund for coverage are not eligible for payment through the fund.

Experts in the DEQ have indicated, however, that tank tightness testing is not a reliable method to determine whether a tank is leaking or whether soil has been contaminated by overfilling or spilling. An underground storage tank may test within the standards established for tank tightness testing but still be leaking a significant amount of product into the ground, especially when considering the leak over an extended period.

Regardless of the ultimate course of action, the Legislature should consider whether the current practices related to the PST fund are in the best interest of the state and the Underground Storage Tank program. Resolution of this issue can come about in a number of ways. One method is to simply continue to manage the program in the same manner but to increase fees to offset any potential drains on the fund. A second approach is to stop the practice of appropriating surplus money from the fund, at least until more data are available. A third would be to increase the threshold amount from $18 million to a larger amount. Finally, to take no action at all is certainly an option, but that course of action may come with an unexpected expense and obligation for the state to find the resources necessary to remediate leaks which the PST fund was intended to cover.

Vehicle Emission Testing Program Is Divided

Utah's move toward an Enhanced Inspection and Maintenance (EIM) program for vehicles also demonstrates the difficulty in balancing the differing interests of three layers of government. This program's implementation is dependent on federal, state, and local agreement on the program's operation. Some form of EIM, or a viable alternative, is required by the EPA, and the state will be held accountable for program success. Legislative action may be necessary for that success if the various governmental interests cannot be satisfied.

Currently, Utah is meeting the minimum federal requirements for vehicle emissions programs but is under pressure by the EPA to implement the EIM program. The EPA has established air quality standards and some basic programs that states are required to implement in order to stay in attainment of those standards. Current air quality provisions require much of Utah's Wasatch Front to operate basic vehicle inspection and maintenance (I/M) programs as a component of the state's implementation plan (SIP) for controlling air pollution. With population growth along the Wasatch Front and increases in vehicles miles traveled annually, Utah is projected to violate air quality standards in the future and EIM, or some other viable alternative, will be required.

The Utah State Legislature granted authority to county governments to decide whether or not to pursue EIM implementation or find another viable alternative. Each county within the air quality non-attainment area identified by the state and the EPA has the authority to determine its own I/M program specifications and implementation. Some DAQ personnel are concerned that the counties simply will not adopt EIM because of the cost of the program and the potential impact on small garages within their jurisdictions. Each organization --the EPA, the DEQ, and county government-- is operating in a different direction from the others, addressing the EIM program as it relates to their own needs.

The DEQ has no formal authority within the state's structure to implement the program nor is the state legally bound to implement the program. The DEQ's role has been one of technical and information support to the counties. The DEQ is, however, still responsible to the EPA for the program and is required to include EIM in both the SIP's and the state's Conformity Plan which is a joint plan with Utah's Department of Transportation. The DEQ is in a difficult position in that the SIP and Conformity Plan cannot be approved without EIM, yet the DEQ can do little more than attempt to persuade the counties to adopt EIM.

According to the DEQ, EIM program elements are needed to attain and maintain federal air quality standards in Utah. Utah's current state implementation plan (SIP) includes emission testing in all four Wasatch Front counties. The SIPs must demonstrate to EPA how the state will stay in attainment of the air quality standards and what measures will be taken to ensure compliance. Recently the Salt Lake and Davis county ozone plans had to include new emission controls, including EIM or equivalent, to compensate for increased emissions because of growth through the year 2005. The SIP also includes an EIM program for Utah County in order to meet the carbon monoxide health standard.

The DEQ and the Utah Department of Transportation's joint conformity plan is required to demonstrate that air quality standards will not be violated because of the construction and development of highways in the state. In order to demonstrate this, the state implementation plans must adequately show air quality standard attainment. Currently, that means an enhanced inspection and maintenance program or a program of equivalent pollution reduction must be included in the SIP. According to DEQ management, there is the possibility of federal sanctions, including a prohibition on the approval of highway funds in the non-attainment areas and the rest of the state if an adequate SIP isn't submitted to the EPA. This amounts to about $130 million annually. Also, the $2.3 million air pollution grant could be withheld and federal control of air programs may also result.

Legislative action is necessary to straighten out the confusion in the management of the EIM program and prevent the possible loss of federal funding. No other organization is capable of realigning program authority between state and local agencies. The issues involved in the EIM program imply the need for state leadership and decision-making as the EPA will hold the state responsible for non-compliance and action in any given county will affect neighboring counties.

Adding a State Air Quality Testing and Research Center Will Expand DEQ's Mission

The Division of Air Quality (DAQ) is also involved in EIM-related initiatives with Weber State University that could expand the department's mission and may duplicate work done by others. DAQ management desires to enter into a joint partnership with Weber State that would establish a training center for Utah mechanics that addresses EIM repair and maintenance, and establish a research and development lab that would, initially, study high altitude emissions testing. Both initiatives have been presented to the DEQ's Executive Director, and thus far neither has been sanctioned nor prioritized by the department. This sort of mission-expansion issue will continue until the department's priorities are clearly stated.

The concepts of a mechanic training center to improve the effectiveness of EIM and that of a research center to formulate programs around Utah's unique needs have some merit. We do question, however, the need for the state to enter into these programs given the similar work already performed by the EPA and the high cost of the total concept.

Mechanic Training Center Addresses Weakness in EIM

As stated earlier, it is likely that EIM will exist at some level within the state and its success will be dependent on the ability of Utah mechanics to correct problems identified by the program's inspections. This is the maintenance portion of the program. DAQ management has noted that the work done, to date, on the implementation of EIM lacks any emphasis on vehicle maintenance. The EPA and the counties have spent most of their time discussing the scope of the program, the number of inspection stations, and the separation of inspection and maintenance. Since the focus of the program is to identify problems in vehicles with newer technology, program success requires capable maintenance personnel to do repairs. To this end, a training program may be beneficial.

The DAQ would like to address the lack of emphasis on vehicle maintenance with a mechanics training center at Weber State University. The center, working in conjunction with affiliate automobile manufacturers, would train Utah mechanics specifically on the correction of emission problems in today's computer controlled cars. The training would be aligned with EIM programs adopted by Utah's counties and would train mechanics in the use of mechanic - grade equipment necessary to correct problems found in EIM testing. At this time, however, the type of EIM programs that will exist are unknown and the limited equipment available may be too expensive for many repair shops. Additionally, repair shops are under no obligation to either purchase or use EIM mechanic-grade equipment. Funding for the training program would come from the DAQ's general funding, Weber State University, and from the manufacturers.

The shortage of properly trained mechanics along with the shortage of low-cost maintenance equipment is being addressed at the federal level. The EPA's national emissions program requires manufacturers to certify that all new vehicles meet air quality standards. Manufacturers are working on equipment to maintain vehicle compliance after delivery. That equipment should be available in the future and will likely be introduced in training centers like Weber State's facility. The proposed state effort in mechanic emission training appears parallel to current EPA/manufacturer efforts which should result in public sector funding of mechanic training.

Research Facility may Duplicate Federal Programs

The initiative to develop a vehicle emissions test and research facility in tandem with the mechanics training program could result in the duplication of research currently conducted by the EPA. Division of Air Quality management feels that the state should be conducting research to find solutions for air pollution problems that fit the geography, resources, public opinion, and politics of the state. However, testing is currently being done by the EPA in areas that appear to be quite similar to those planned by the DAQ. Establishing a state testing facility may be redundant and may not be able to compete with the resource capabilities of the EPA facilities. It is costly to conduct vehicle emissions research and states simply can't afford to pay for studies on the same scale as the EPA and as is necessary for valid research. Most states do not have the resources to analyze programs as thoroughly as the EPA. Because of this, EPA officials contend that states with research programs have not been able to demonstrate that EPA programs are poorly suited for their respective states. Additionally, one EPA official said that state research facilities are generally under-utilized once they are built. Although states hope to invalidate EPA research by doing their own studies, the EPA contends that state research usually ends up validating EPA findings.

According to the DAQ's director, the Weber State University research center would require upwards of $4 million dollars to become operational. This is a costly pursuit, considering the entire budget for Air Quality for Fiscal Year 1995 was $6.9 million. Moreover, there have been no comparison studies to show that these testing and training initiatives are the best investment in reducing automotive pollution. These initiatives are costly and may not result in any workable solutions beyond those already required by the EPA. Further, entering the field of primary research is an expansion of the department's mission that should be determined by the Legislature.

Some Solid and Hazardous Waste Legislation May be Inadequate

There appears to be some conflicts in solid and hazardous waste legislation where clarification could prevent future problems. One conflict occurs where Utah law possibly violates the state's agreement with the EPA. Utah law exempts certain types of solid waste and hazardous wastes from the treatment and disposal requirements of the federal law, in effect, removing these wastes from any oversight. A second conflict results from the differences between Utah and federal law and the differences between Utah law and other states' laws. Some states' have chosen to classify some federally recognized solid wastes as hazardous in their states. These wastes are being disposed of in Utah, but may not be classified as either solid or hazardous because of the differences between Utah and federal laws. Finally, Utah state law appears to be contradictory by not granting the DEQ the authority to accomplish remediation of hazardous waste sites in the state yet requiring that preliminary work be performed. The Legislature should consider each of these issues from the perspective of how well the existing laws contribute to accomplishment of the department's tasks of safeguarding public health and protecting the environment.

Utah Law is Less Stringent Than Federal Law

Utah's waste classification system has exemptions that may be in conflict with a basic tenet of the Resource Conservation and Recovery Act (RCRA). The EPA, through RCRA, defines and classifies waste material and allows each state to develop it's own solid and hazardous waste programs. State programs are required to be no less strict than the mandated RCRA standards. On the other hand, RCRA does not prevent states from developing programs that are more strict. Utah legislation violates this requirement by exempting four material types from being identified as a solid waste that are not exempted in the federal law.

Solid waste is defined similarly in both federal and Utah state law. With some specifically listed exceptions, solid waste is any discarded material, including abandoned, recycled, and other inherently waste-like materials. The problem arises in that Utah law has expanded the list of exempted materials to include certain items that the federal government does not exempt. These materials, called Bevill wastes, include:

(1) drilling muds, produced waters, and other wastes associated with exploration, development, or production of oil, gas, or geothermal energy;

(2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(3) solid wastes from the extraction, beneficiation, and processing of ores and minerals; or

(4) cement kiln dust.

The EPA recently announced that it intends to develop limited controls on cement kiln dust because that product is now considered to be a hazardous waste. This is an exempt material under Utah law with no treatment or disposal requirements. The state should continue to strike a balance between environmental protection issues and industrial and economic growth, however, the state is not currently in compliance with the federal law and should take steps to remedy this discrepancy. Federal funding and program primacy may be threatened should the state decline to bring Utah into alignment with the federal law.

Non-RCRA Hazardous Waste is not Dealt With Consistently in Utah Law

Utah's failure to address the above wastes is further complicated by a provision of Utah law that regulates some out-of-state generated wastes by volume rather than by health risk. Some other states have for their own purposes opted to classify certain wastes, classified as solid waste by the EPA, as hazardous in nature. Utah, who cannot without cause be more strict than the federal classifications, accepts and must treat these wastes as solid wastes or, as in the case of Bevill materials, as non-classified wastes. Those wastes that can be classified by Utah as solid wastes must be placed in a class V commercial facility. In that facility the waste receives no special treatment until a legislatively set threshold is met. Beyond that threshold the wastes must be treated as they would be in their state of origin. If they are Bevill wastes, no special treatment is necessary and the wastes are not limited to class V commercial facilities. There is no immediate problem with the disposal of these wastes because the only receiving commercial facility offers a high level of protection. However, there is no provision in Utah law preventing the disposal of Bevill wastes or the disposal of Utah-generated wastes of a similar nature in lower protection level landfills.

Legislation also gives the department the responsibility of monitoring the larger amounts of non-RCRA hazardous waste from other states received by the commercial facility. The department indicated that they lack sufficient personnel to accomplish this task. According to the Deputy Director of the department, this legislation is a legislative safeguard to ensure that non-RCRA hazardous waste materials are disposed of at a site that can adequately and safely deal with those materials. This safeguard appears unnecessary because waste volumes of the same materials but under the threshold are not addressed by the legislation and are placed in the same facility but receive lesser treatment levels.

There appears to be conflicts between legislation that on the one hand recognizes larger volumes of this type of waste requiring special handling, but on the other hand appears to ignore smaller volumes of the same wastes. If these wastes happen to be one of the four classifications not recognized as waste by Utah law, even the larger volumes are not addressed.

Utah law has created a situation of treating other states non-RCRA hazardous waste as hazardous, solid, and non-classified waste based solely on the volume received not on the health and safety aspects of the material.

Lack of Authority is a Problem in Hazardous Waste Program

Utah law provides little authority for the DEQ to take remedial action at hazardous waste sites unless those sites are recognized as superfund sites by the federal government. If the federal government does not address a hazardous waste site through the superfund program, the site will, in all likelihood, not be remediated. Currently, over 200 sites have been identified in Utah as needing some degree of remedial action, either safe removal or on-site treatment. The high cost of site remediation has created a situation where the EPA, with its authority under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or superfund, cannot address all the identified sites. The EPA prioritizes sites nationally creating a National Priority List (NPL) that identifies sites that will receive funding. Only 16 of Utah's over 200 sites are listed on the NPL to receive funding.

The state's Hazardous Substances Mitigation Act is Utah's companion legislation to the federal CERCLA. This act provides guidance and direction related to investigations and abatement action for hazardous waste sites within the state, however it falls short of providing statutory authority for enforcement of any remediation action. We discussed the Hazardous Substances Mitigation Act with the Deputy Director of the DEQ, who was also a member of the legislative task force that drafted the act. According to the deputy director, at the time the act was drafted the task force intended to establish legislation that would lay the groundwork for a state-based remediation program. Such a program would enable the state to identify and take action to remediate sites that are not addressed by the federal superfund program. According to the deputy director, resistance to this "state superfund program" came from local business and industry who claimed that such a program would violate the basic tenet of Utah's environmental program to not be more stringent than CERCLA. Their rationale was that if a site is not contaminated enough to be a federal priority it cannot be considered a state priority. Thus, statutory authority to conduct or enforce remediation of sites was omitted from the act.

The state act requires that the DEQ maintain a Hazardous Substances Priority List, however the department has chosen not to do so. The list, as outlined in the code, is actually three separate lists of hazardous waste sites that include: NPL sites, proposed NPL sites, and scored sites. A scored site is defined in the **Utah Code** as a site that meets the requirements of scoring established by the federal government for placement on the NPL. A scored site does not necessarily have to be an identified superfund or proposed superfund site. Rather, it was intended that this third category would help to identify sites and responsible parties, with action initiated by the state to begin assessment and remediation efforts.

The department's reasoning behind not maintaining a list is that there is little money in the Hazardous Substances Mitigation Fund and the DEQ has no authority to spend money on

remediation efforts. Money from the fund may be used only for emergency or abatement action, remedial investigations, paying the state's portion of federal superfund costs, and the state's portion of the costs of cleanups associated with the Leaking Underground Storage Tank Trust Fund.

Although the deputy director admits they have reached a state of dormancy with regard to the Hazardous Substances Priority List, he nonetheless feels that the list should be used and that it can be helpful in starting the federal CERCLA process, especially in the case of a cooperative responsible party. He also suggested that it may play a greater and more significant role should the EPA realign the superfund program and give more latitude to the states in the use of superfund money for identification and remediation of sites. According to the deputy director, should the state gain more control over federal superfund programs through program reform, it is likely that the state would need to reassess its position on the remediation issue.

The DEQ is Utah's guardian for environmental issues, and is responsible for safeguarding public health and protecting the environment. As such we consider this lack of authority concerning site remediation, to be a conflict between DEQ's responsibility and authority, especially when considering that relatively few hazardous waste sites will ever be recognized as superfund sites.

Recommendations:

1. We recommend that the Legislature review its position regarding the appropriation of surplus money from the PST fund.

2. We recommend that the Legislature consider the recommendations of the State Risk Manager and the actuarial reports for the use of soil sampling and analysis for PST fund admittance which would further ensure the soundness of the fund.

3. We recommend that the Legislature examine existing statutes regarding Utah's Enhanced Inspection and Maintenance Program and modify those statutes to place program authority within the Department of Environmental Quality.

4. We recommend that the department present the Legislature with a more clearly defined mission and prioritized program listing.

5. We recommend the Legislature enact legislation to eliminate discrepancies between state and federal waste classifications to address the exemption of the four material types (drilling muds, fly ash, extraction wastes, and cement kiln dust) listed in this chapter.

6. We recommend that the Legislature review current legislation regarding the control of other states' non-RCRA hazardous wastes. Specifically, the Legislature should consider the elimination of existing legislation requiring monitoring of the volume of this waste entering the state.

Agency Response