

In regards to the letter from Mr. Mark Ellis dated January 11, 2011 concerning the Professional Geologist Licensing Act and the recent changes to Rule R311-207-9, the Department of Environmental Quality, Division of Environmental Response and Remediation (the division) respectfully submits the following information for your consideration.

- The Utah Underground Storage Tank (UST) Program is fully delegated by the U.S. Environmental Protection Agency (EPA) to the State of Utah. The UST rules (R-311-200 to 212) are an essential component of state program approval and without them the State of Utah would be unable to maintain primacy for the state's UST program.
- The recent rule change referenced by Mr. Ellis was approved for final adoption by the Solid and Hazardous Waste Control Board on February 10, 2011. This was the culmination of a comprehensive rule-making process which included discussions with our stakeholders (the UST Task Force), an informal comment opportunity to all stakeholders (including all certified UST consultants), approval from the Solid and Hazardous Waste Board to conduct formal rule-making, the formal rule-making process with Administrative Rules review and an official public comment period (again with notice sent to all stakeholders including all certified UST consultants), followed by a return to the Board for final approval to adopt the rules. Please note that the division received no public comments during the 30-day formal public comment period.
- The requirement to hold a P.G. or P.E. to practice geology before the public is a requirement of the Professional Geologist Licensing Act and the division is simply trying to ensure that our practices are in accordance with that law. Since the P.G. license statute went into effect, certified UST consultants have been expected to meet the P.G. requirement if they were conducting activities that would be considered the "practice of geology before the public" (see R311-201-11).
- Specific to Mr. Ellis' concerns, a certified UST consultant may hold a degree in an area that does not meet the DOPL licensing requirements to become a P.G. or P.E. However, the Professional Geologist Licensing Act does not exempt Certified UST Consultants from its requirements if they are to "practice geology before the public." The division is not in a position of condoning violations of this law.
- As to the new UST rule R311-207-9, this applies only to certified UST consultants paid out of the PST fund to assist an affected off-site property owner(s). The fact that contamination is found off-site is due to contaminant migration through the substrate. In order to be able to effectively consult to the impacted third party(s), an adequate understanding of contaminant migration, impacts of lithology on contamination migration, and the ability to reasonably interpret data points and draw conclusions from constructed groundwater gradient maps is necessary. Prior to rule-making, the division met with DOPL's

P.G. Licensing Board on several occasions to better understand how the P.G. licensing requirement applies to the UST program. During these meetings, the division was instructed that many of the activities associated with the investigation of off-site contamination constitute “the practice of geology before the public.”

- The UST rules do not prohibit other disciplines from being a certified UST consultant or inhibit an inventor from developing processes to address petroleum contamination. They simply require that someone practicing geology before the public demonstrate, through the DOPL licensing process, the minimum standard of competency required by Utah state law. If a certified UST consultant is not a P.G or P.E., they may hire a P.G. or P.E to perform or oversee elements of the work that require P.G or P.E. oversight.

In conclusion, these concerns seem to be more about the Professional Geologist Licensing Act than about the UST rules. Unless certified UST Consultants are exempt from this Act when functioning in the capacity of an UST Consultant, some of the work they do may fall under the DOPL P.G. license requirements. Not reauthorizing the UST programs rules does not solve this issue, but removing them from reauthorization does create a primacy problem with significant ramifications to keeping and implementing the UST program at the state level.