



Newsletter

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Changes Sought on Petroleum Storage Tank Trust Fund

Efforts are under way to establish a financially sound Petroleum Storage Tank Trust Fund, a state insurance policy against damages caused by leaky underground storage tanks. According to the most recent actuarial study, the fund could run out of money by 2008.

The Tank Advisory Task Force, made up of industry and state representatives, in May recommended that the 2006 Legislature change the law to give owners and operators of underground petroleum storage tanks an "all or none" choice: either participate fully in the fund by including all tanks under the state's insurance program or self-insure all the tanks. Federal law requires all tank owners and operators to have the financial ability to pay for any cleanup associated with damages caused by a petroleum leak. But Utah's law has allowed operators to choose from their tank fleet which ones to have covered under the Petroleum Storage Tank Trust Fund (PST) while self-insuring the others.

During the summer, the Natural Resources, Agriculture, and Environment Interim Committee received testimony on the PST Fund and requested that legislation be drafted to modify the law to that of a concept of "all or none."

Brad Johnson, director of the Division of Environmental Response and Remediation (DERR), said the vast majority - about 85 percent of the operators - participate fully in the fund, leaving about 15 percent who have tanks that are left out of the fund. However, the fund is paying for those tanks where owners can't get competitive insurance rates. There's the risk that insurance money would pay for a cleanup that would end up absorbing much of the fund. The "all or none" concept is a gamble, officials admit. There's the risk that operators will opt out of the fund completely. But officials are hopeful participation will increase. "Having everyone participate is a temporary solution for solvency,"

Johnson said. It's not a panacea, added Bill Sinclair, deputy director of the Department of Environmental Quality, "It may not solve the problem, but it should extend the time period of solvency. We will continue to pursue working on potential solutions that will result in a stable insurance fund for the tank owners and operators."

Rep. David Ure (R-Kamas) will sponsor legislation that would require owners and operators to have all or none of their tanks on the PST Fund. Passage of the bill could generate an additional \$1.5 million a year. The fees would remain the same, officials said. The revenue going toward the PST is from an environmental assurance fee of ½ cent per gallon on the initial sale of gasoline and diesel in the state. An annual assessment also is applied to each underground tank. If the cash balance of the PST Fund on June 30 each year exceeds \$20 million, the assessment of the environmental assurance fee for the next fiscal year is reduced to a ¼ cent per gallon on petroleum delivered to tanks.

The State Privatization Policy Board has evaluated the feasibility of privatizing the fund administration. That would require operators and owners of underground petroleum storage tanks to seek private coverage, which could end up costing the operators more.

DEQ Honors First Leadership Group Grads

The first Department of Environmental Quality's Leadership Development Group graduated December 14, 2005 after successfully completing a two-year course that led to recommendations on how to improve Department communications.



Tyler Cruickshank, air modeler with the Department of Air Quality; Bill Rees, environmental scientist with the Division of Environmental Response and Remediation; Loren Morton, a section manager for the Department of Radiation Control; Renette Anderson of the Office of Planning and Public Affairs in the Executive Director's Office; Rachael Cassady, environmental scientist with the Division of Drinking Water; Boyd Swenson, environmental engineer with the Division of Solid and Hazardous Waste; and John Whitehead, branch manager of the Division of Water Quality were recognized by Bill Sinclair, deputy director of DEQ, at a luncheon with their division and office directors.

"These individuals have undertaken a course of study that has given them a broader perspective of what the Department does and an opportunity to work together with other individuals," said Bill Sinclair, deputy director of DEQ, who was the senior manager who mentored the group. "This two-year course has given them competencies that will help them succeed."

Participants met monthly to discuss a variety of topics that are relevant to DEQ. The curriculum is designed to apply many of the competencies directly to activities within DEQ. Classes consist of a selected representative from the Executive Director's Office and each of the Divisions in DEQ, who are then mentored by a DEQ senior manager. Participants' also complete leadership/employee development classes, independent studies, prepare a brown bag presentation, participate in a rotation through DEQ divisions and offices, and complete a group project. The group's project was how to improve communications, which each Division initiated. Completion of the program takes 2 years. New classes begin in January of every year.

The Leadership Development Group arose out of an overall Leadership Development Training program intended to provide the skills to employees to prepare them for a leadership position. One employee, John Whitehead, was promoted to a branch manager while participating in the training.

"It really gave me valuable skills to help me interact with others within the Division, while also having a better understanding of the entire Department," said Whitehead.

"I appreciated the opportunity to consider leadership issues from different perspectives," added Renette Anderson. "I especially enjoyed the process of arriving at and implementing the group project. We had a variety of strong opinions at the table and I found the give-and-take enlightening. I developed a great respect for the other members in my group and look forward to continued association."

In 2006, the next leadership group, headed by Brad Johnson, director of DERR, will complete its project aimed at improving communications to the non-regulatory public. In doing so, the group intends to show how the environment has improved over time – information that will be included in a "State of Environment Report" to be widely distributed to the public.

Energy Policy to be a Key Issue this Session

Proposed during the 2006 General Session is a bill that lays the foundation of Utah's energy future, a result of efforts by a bipartisan Energy Policy Work Group formed last summer to develop energy policy for the state of Utah. The bill, sponsored by Rep. Roger Barrus (R-Centerville), would designate a state energy officer to encourage development and promotion of the state's energy resources. Rep. Jim Gowans (R-Tooele) has filed separate legislation, which also is based on the Work Group recommendations, to modify the state's Clean Fuels and Vehicle Technology Fund that provides loans and grants to businesses and government entities purchasing clean vehicles. Gowans' bill would expand the fund to include other types of vehicles, retrofits and fuel systems determined to be effective in reducing air pollution. The fund also could help provide businesses and governments a state match for federal and non-federal grants to purchase clean fuel vehicles, under the proposal before the Legislature.

The Department of Environmental Quality is taking the lead on the oversight of the Clean Fuels fund. When Gov. Jon Huntsman, Jr. took office in 2005, the state's energy office was reorganized. The fund, established in the early 1990s, moved to the DEQ, and is being administered by DEQ's Division of Air Quality (DAQ). Huntsman hired Dr. Laura Nelson as his energy policy adviser who has been working with the Legislature to develop energy policy that also promotes the use of advanced vehicle fuels and technology. Under the reorganization, the Department will establish administrative rules that govern the fund, but before it does, it wants to incorporate any statutory updates from this session. "We want to get the program up and running so it provides the benefit it is designed to give to Utahns – cleaner vehicles for improved air quality," said Rick Sprott, director of the Division of Air Quality.

“With the ongoing effort to re-evaluate the state’s energy policy, which is evolving, and before we write the administrative rules, we want to make sure it is in-sync with the direction from the governor and the Legislature.”

Energy Policy Work Group

At the direction of the chairs of the Natural Resources, Agriculture, and Environment and the Public Utilities and Technology interim committees, Reps. Barrus, David Ure (R-Kamas) and Ralph Becker (D-Salt Lake) created the Energy Policy Work Group, which began meeting last summer. The group sought input from various agencies, corporations and public interest groups to help formulate an energy policy aimed at providing adequate, reliable, affordable, sustainable, and clean energy resources, primarily through the private market, and also to offer incentives for short- and long-term needs. “Energy is fundamentally important to the welfare of Utah because of its impacts on jobs, industry, consumers, and the environment,” stated the group’s draft report approved by the joint committee November 29.

The bill reflects some of the working groups’ recommendations, including studying the creation of a centralized state repository for energy-related information. The state energy officer would promote, assist and study various energy-related tasks, including advanced vehicle fuels and technology.

Expanding Clean Fuels Program

The Clean Fuels and Vehicle Technology fund was developed in the early 1990s as one of several programs stemming from court settlement awards from oil company overcharges during the 1970s. “A pot of money was made available to states to provide restitution on consumer overcharges, but instead of giving the money out individually the Utah Energy Office became the steward of the overcharge monies, which were used to create several energy-related programs, including one that provided loans to entities for purchasing alternative fuel vehicles,” said Glade Sowards, energy program coordinator for DAQ. Conceived as a means of achieving federal Energy Policy Act of 1992 goals, the program focused mainly on natural gas, propane and electric vehicles. Beginning in 2001, the program also included grants to cover the incremental cost of converting fleets to cleaner technologies.

Since its inception, the program has provided a combined \$925,000 in loans to help pay for around 81 clean fuel vehicles, said Sowards. Another \$180,000 has been awarded in grants to 40 different entities to purchase 67 clean vehicles and two refueling stations, Spratt added. The fund has roughly \$2.4 million in it today. But the program does not reflect current advances in technology. “We have participated in the Energy Policy Working Group effort and are working with stakeholders to propose a change in the fund to promote the use of advanced vehicle fuels and technology,” Spratt said.

In its recommendations to the full Legislature, the group took a “technology neutral” approach to allow for enough flexibility to adapt to changing market conditions. For instance, the fund could also provide loans to entities that want to retrofit a bus with a diesel particulate filter that would help reduce emissions. “The focus is on air quality and fuel economy,” Spratt said. “We also are focusing on fleets because existing tax credits are available to private citizens.”

In addition, the group has recommended that the state expand and improve its public transportation, rideshare, telecommuting and other trip reduction initiatives. “These measures will help improve air quality, enhance energy security and reduce operational costs,” stated the Energy Policy Work Group’s report.

Governor Honors Radiation Manager for Tailings Removal



Loren Morton, a section manager for the Utah Division of Radiation Control, was awarded the prestigious Governor's Science and Technology Medal for his scientific work that led to the U.S. Department of Energy's decision to move 13.5 million tons of uranium mill tailings from the banks of the Colorado River.

Gov. Jon Huntsman, Jr. honored Morton, along with 10 other recipients recognized for their achievements, at an evening ceremony on Nov. 3. "It's been a pleasure to work on the Moab tailings project, and be involved in the Utah Department of Environmental Quality's efforts to protect the Colorado River," said Morton. But he was quick to credit many people involved in the work, including, Dr. Kip Solomon at the University of Utah; Phil Gardner and Terry Kenney of the U.S. Geological Survey in Salt Lake City; Paul Mushovic of the U.S.

Environmental Protection Agency in Denver; Don Metzler and his staff at the DOE office in Grand Junction; Bob O'Brien of the Division of Environmental Response and Remediation, and many local citizens of Moab. "Together, we have had the privilege of protecting the environment for future generations."

Bill Sinclair, deputy director of DEQ, nominated Morton for the award for proving key scientific information that supported the state's position to remove the mill tailings from the former Atlas mill site on the banks of the Colorado River. The Energy Department considered a cheaper cap-in-place option. But Morton, a hydrogeologist, helped convince the federal government that a large scale flood would undermine the pile that was leaching contaminants into the Colorado River, a source of drinking water for 25 million people downstream. In September, DOE signed the official decision to move the tailings to Crescent Junction, 30 miles away.

"Loren has received kudos from many who have worked on this project for a long period, including the U.S. Department of the Interior, National Park Service, U.S. Fish & Wildlife Service, U.S. Environmental Protection Agency, Grand County Council, and Moab residents," Sinclair said.

Morton has been with DEQ for 21 years – 10 years as the hydrogeologist in the Division of Water Quality before joining the Division of Radiation Control where he monitors the low-level radioactive waste facility Envirocare of Utah and uranium mills. Before joining DEQ, he was an engineering geologist for the U.S. Bureau of Reclamation in Utah. He is a graduate of Brigham Young University where he earned both a bachelor's and master's degree in geology.

Governor's Budget Restores Some DEQ Funding Cuts

Department of Environmental Quality officials are hopeful the Department will receive much of the \$48.7 million designated by Gov. Jon Huntsman Jr. – a request that does not rely significantly on general fund dollars and would not be impacted by the governor's proposed \$60 million tax cut.

“The Department of Environmental Quality relies on general fund tax dollars for approximately 23 percent of its budget,” said Dianne Nielson, executive director of DEQ. “Our budget reflects the fact that during the last 10 years, DEQ has provided existing and new environmental services with fewer employees during a period of significant economic growth by finding ways to do business more efficiently and effectively.”

With tax collections running ahead of expectations by more than \$90 million during the first four months of the fiscal year that began July 1, DEQ officials are optimistic the Legislature will fully fund the department’s budget request.

“I think the legislature will be favorable to DEQ because we have worked hard to provide a fiscally responsible request,” said Steve Higley, director of support services for DEQ.

The Governor’s FY07 proposal for DEQ represents an 8 percent increase from what was authorized this year, including restoring \$70,000 in legislative cuts two years ago. Those funds are needed to pay local health departments for services provided on behalf of DEQ. It also includes \$400,000 to fund the state’s opposition to high-level nuclear waste planned for interim storage on Goshute tribal lands and \$200,000 to help leverage federal funds to pay for a stakeholder-supported air quality study of animal feeding operations (AFOs).

Also proposed in the governor’s overall \$9 billion budget is a 2.5 percent cost-of-living increase for state employees, plus 2 percent in discretionary funding that could be used for merit pay increases for the 421 employees at DEQ.

DEQ receives 23 percent of its budget from the state general fund. The remainder of DEQ’s overall budget is funded by a combination of federal funds (36 percent), restricted funds (23 percent) and collections (18 percent.) The governor has recommended the Department be funded as follows:

- Water Quality - \$9.8 million
- Air Quality - \$9.5 million
- Environmental Response - \$8.6 million
- Solid and Hazardous Waste - \$7.4 million
- Executive Director Office - \$5.8 million
- Drinking Water - \$4.1 million
- Radiation Control - \$3.1 million
- Cleanup Recovery Costs

As in previous years, DEQ has sought funding to pay an attorney to aggressively recover money the Division of Environmental Response and Remediation (DERR) has incurred for cleanup work as a result of leaky underground storage tanks. The proposed \$43,600 in FY07 represents half of what DEQ received for the current year, a reduction because officials predict they will need the part-time services of the attorney, rather than full time. The money has been well spent. Over the past 10 years, the attorney working on the project has successfully recovered \$2.6 million by tracking down the responsible parties to pay for cleanup cost. The actual money spent on the attorney services has amounted to \$535,000.

Also sought is a \$400,000 appropriation for the Hazardous Substance Mitigation Fund, managed by DERR, to do emergency cleanups. That money comes from the Environmental Quality Restricted Account. The Department is seeking an appropriation to cover the state’s share of environmental cleanups at Superfund sites and emergency response cleanups.

More information about these issues can be found at: <http://www.environmentalresponse.utah.gov/>

Air Monitoring Money for AFOs

The Division of Air Quality proposes to initiate an air quality study of animal feeding operations to help producers know if they are in compliance with the Clean Air Act. The Governor's budget proposal includes \$200,000 in supplemental general funds to leverage federal funds provided through the federal agricultural bill to cover the operational cost of the study. DEQ is working with the Utah Department of Agriculture, federal agriculture and environmental interests, and ranchers to complete this work.

Because DEQ's budget is partially funded by fees paid by permit holders and others, some fee changes are proposed. The most notable would be a 7.7 percent increase for air emissions, from \$39.94 per ton to \$43.03 per ton. This reflects a decrease in actual emissions, with only a minor increase in program costs.

Lead Acid Battery Recycling Proposed for 10 Year Reauthorization

The Lead Acid Battery Act, a cost-free program to the taxpayer that recycles lead acid batteries commonly found in vehicles, is set to expire July 1, 2006. Dennis Downs, director of the Utah Division of Solid and Hazardous Waste, has asked the 2006 Legislature to renew the program for 10 more years.

The act has been in effect since 1992, and it requires all retail outlets that sell lead acid batteries to accept the old batteries from customers if they buy new ones. The batteries are then taken out of state for recycling, primarily to lead smelters that reclaim the lead. State law also prohibits disposal of lead acid batteries in landfills. "There's a financial incentive," Downs said. "The batteries have value, so it's in the interest of the battery retailers to take the old batteries."

The act is among numerous ones to be included as part of an omnibus bill. It isn't likely to face opposition since there is no financial burden to the taxpayer and because of the potential hazards lead and acid pose to the environment. In April, the Legislature's Natural Resources, Agriculture and Environment Interim Committee recommended that the act be reauthorized by the full Legislature for 10 years.

No data is available to determine the actual volume of used batteries collected and recycled because retailers aren't required to report that information to the Utah Department of Environmental Quality. However, state officials still believe it has made a difference. "The Division has not received any complaints about illegal disposal of lead acid batteries," said Downs. "Private auto parts and vehicle service retailers and wholesalers have supported the program."

Mercury in Fish: Should Anglers Reel it in?

With reports of elevated mercury levels discovered in Utah game fish, anglers who subscribe to the adage "hook 'em and cook 'em" might be thinking twice before frying up their favorite bass recipe or blackened catfish.

But officials with the Utah Department of Environmental Quality (UDEQ) say the risks should be placed in perspective. Consider, for instance, that only three waterways in the state have tested positive for elevated mercury levels that warrant limiting consumption and that the risks of any problems from mercury are very low if consumption guidelines are followed.



So far, environmental monitors have tested about 159 sites statewide, with only three locations where fish consumption advisories have been needed. With the results now available from about 45 percent of the tests, unacceptable mercury levels have been found in only about 10 percent of the fish, said John Whitehead, assistant director of the Utah Division of Water Quality and chairman of the Statewide Mercury Work Group.

“This doesn't mean people should stop fishing, and eating fish,” said Whitehead. “The fish advisories are meant to alert the public so they can make informed choices and where needed, simply limit the amount of fish you are eating.”

Anglers will want to exercise caution if fishing for largemouth bass at Gunlock Reservoir in Washington County, brown trout in Mill Creek in Grand County, and channel catfish in the Green River in Desolation Canyon. Tests there have shown mercury values that exceed U.S. Environmental Protection Agency levels of concern if these fish are eaten more than a few times each month for a long period of time. UDEQ and the Utah Division of Wildlife Resources (DWR) have issued fish consumption advisories for those waters.

That advisory cautions that women who are pregnant or may become pregnant, nursing mothers and young children should not eat more than one 4-ounce serving per month of fish from Gunlock, Mill Creek or Desolation Canyon. Mercury levels are high enough in fish from Ashley Creek that no amount is considered safe.

For everyone else, consuming mercury-tainted fish should not be a problem if the portions are small and infrequent. The advisory recommends no more than two 8-ounce servings per month of fish from Gunlock, and the Green River no more than three 8-ounce servings per month of fish from Mill Creek.

For the avid hunter and fisherman, concerns have been raised about the cumulative effects of mercury in the natural food chain. In addition to fish, some species of waterfowl - northern shovelers and common goldeneyes - on the Great Salt Lake have tested positive for elevated levels of mercury.

“The problem with mercury is that it bio-accumulates,” Whitehead said. “Very low concentrations of mercury get into waterways and are picked up by smaller organisms that fish and waterfowl eat. Mercury accumulates in the muscle tissues of these fish and waterfowl in much higher concentrations than the water and then is passed on to those who consume this wildlife.”

Where is the mercury coming from?

Investigations are underway to determine the source of the mercury contamination. Whitehead said one common source is air pollution, both inside and outside of Utah. Air emissions of mercury occur as a result of natural phenomena, like volcanoes, forest fires and geothermal activity. It also can result from man-made activities like incinerator burning, scrap metal recycling and mining processes.

“UDEQ is working with neighboring states to learn more on how releases of mercury from sources in nearby states, including the gold mines in Nevada, may be impacting the state of Utah,” Whitehead said. He added that state regulators will “implement an aggressive monitoring program to determine if there are other areas in Utah where fish or waterfowl would pose a human health risk if consumed.”

Utahns also should be aware other sources of mercury in their cars, homes and products we use everyday need to be properly disposed of in order to avoid adding to our ongoing mercury problems. These include mercury switches in automobiles and mercury thermometers. For more information on proper disposal or recycling, visit <http://www.deq.utah.gov/issues/Mercury/index.htm>.

How Much Mercury is too Much?

Jason Scholl, a toxicologist at the Utah Department of Health, said the amount of mercury tends to increase with the age and size of the fish. Fish that consume other fish have higher levels of mercury.

Most of that mercury is methylmercury, which is rapidly absorbed into the body after consumption (about 90 to 100 percent is absorbed). The body transforms methylmercury into inorganic mercury, which can remain in the body for several months.

“The nervous system is very sensitive to all forms of mercury,” Scholl said. “In poisoning incidents that occurred in other countries, some people who ate fish contaminated with large amounts of methylmercury or seed grains treated with methymercury...developed permanent damage to the brain and kidneys.”

Lab tests also show mercury can change blood pressure and heart rates, adversely effect developing fetuses, increase the chance of abortions and stillbirths, and affect male reproductive organs, Scholl said.

But officials say there is no need to be alarmed by small amounts of mercury, only more aware of the health risks of over-consumption. Mercury is a natural part of the Earth's ecosystem, and it is found in minute quantities in many different foods consumed daily. For example, there is currently a nationwide advisory concerning the consumption of shark, swordfish, King Mackerel, or tilefish. More information on the national fish advisory can be found at <http://www.cfsan.fda.gov/~dms/admehg3.html> (opens in a new window).

“Even canned tuna fish we all get from the grocery contains some mercury,” Whitehead said. “Our job as consumers is to be aware of the concerns and issues in all food we eat and to make intelligent choices.”

Mercury contamination is a nationwide problem, and Utah officials take it seriously.

UDEQ began collecting fish in 2000 under a program aimed at looking at a broad variety of issues with mercury being only one of several hundred items being studied. Due to the huge amount of data collected in this program there has been a backlog in the testing because tissue samples had to be sent to an out-of-state EPA lab for processing. UDEQ recently purchased a \$50,000 mercury analyzer for the Utah Department of Health State Laboratory to analyze the samples more rapidly and report the results to the public in a timely manner.

State officials are also reaching out to the public, which has become alarmed over the reports of mercury risks. An 18-member Mercury Work Group was created with officials from federal, state and

local governments, conservation groups, sportsmen, businesses and other interested stakeholders. The Work Group is developing a standardized sampling strategy for collection and analysis.

More Utah fisheries may be added to the advisory list as more test results come in. Officials are planning a broad testing strategy for Lake Powell, one of the state's premier fisheries.

"We hope to look at areas where most of the fish are taken," Whitehead said.

The latest information about fish consumption advisories is available at www.deq.utah.gov/issues/Mercury. For more information about the health effects of mercury, visit www.atsdr.cdc.gov/tfacts46.html (opens in a new window).

The Natural Resources Defense Council also has a "mercury calculator" for fish eaters on its web page at www.nrdc.org (opens in a new window).

Mercury advisories aren't meant to put a damper on fishing. But they can serve as a reminder not to over-consume your favorite game fish, no matter how tasty the recipe.

Water and Energy Key Environmental Issues, 2006 Legislative Session

The 2006 Legislature could shape up to be a busy session for the Utah Department of Environmental Quality. Although no new programs are being sought, the budget is frugal, and just two DEQ proposals are on the Legislative table – a continuation of a battery recycle program and a quick fix to the beleaguered Petroleum Storage Tank Fund (see related stories), there are a plethora of bills filed that could affect DEQ. Both DEQ proposals have received favorable recommendations on passage either from legislative committees or stakeholder groups.

As with previous sessions, lawmakers will tackle other issues that could impact various divisions within DEQ. Consider the following:

Energy policy legislation. The Public Utilities and Technology Interim Committee created an Energy Policy Work Group to develop recommendations that will be considered during the session, including expanding the Clean Fuels Vehicle Fund that provides loans for the purchase of vehicles that run on cleaner fuels (see related story);

Water rights legislation. One measure being sought would allow the reuse of water by a public agency, requiring approval from the Division of Water Quality; and

Radioactive waste disposal. Envirocare of Utah has requested that the Legislature and governor approve an expansion request of Class A low-level radioactive waste onto land adjacent to its Tooele County landfill. The fate of the bill is uncertain considering the governor's opposition to it.

Other bills that have been filed, by title and sponsor, include:

- Amendments to Indoor Clean Air Act, Sen. Mike Waddoups (R-Taylorsville)
- General Fund Surplus Appropriation for Water Development Projects, Sen. Lyle Hillyard (R-Logan)
- Asbestos Compliance of Cities and Counties, Rep. Rosalind McGee (D-Salt Lake)
- Groundwater Management Plan, Rep. David Ure (R-Kamas)

- Bear River Development Act, Rep. Stuart Adams (R-Layton)
- Hybrid Vehicles Use of High Occupancy Vehicle Lanes, Sen. Scott McCoy (D-Salt Lake)
- Mine Safety and Certificate Amendments, Sen. Mike Dmitrich (D-Price)
- Utah Coal Regulator Program Amendments, Sen. Mike Dmitrich (D-Price)
- Lake Powell Pipeline Development Act, Sen. Tom Hatch (R-Panguitch)

More information on bills that have been filed is available at www.leg.state.ut.us (opens in a new window).