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Donna Kemp Spangler, Editor

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## Attorney for DEQ Awarded 2006 Lawyer of the Year

State Environmental Attorney Denise Chancellor's dogged determination to keep nuclear waste out of Utah has led her peers of the Utah State Bar to honor her with the distinguished Energy, Natural Resources and Environmental Law (ENREL) Lawyer of the Year award for 2006.

For nearly 10 years, Chancellor, Assistant Attorney with the Office of the Utah Attorney General representing the state of Utah, has fought the battle to keep Private Fuel Storage (PFS), a consortium of nuclear utilities, from temporarily storing 40,000 tons of spent fuel on the Skull Valley Goshute Indian Reservation, 45 miles southwest of Salt Lake City.

The latest "fatal blow," as Chancellor puts it, came on Sept. 7, 2006 with two distinct rulings by the U.S. Department of the Interior that rejected the PFS lease and the use of public lands to build a rail line or an intermodal hub that PFS had hoped to use to transport the spent fuel onto the reservation.

"It was a big administrative win brought about by her efforts over the last 10 years," said Richard Rathbun, chairman of the Utah State Bar's Energy, Natural Resources and Environmental Law Section. "It is not an exaggeration to say that she has been working private practice hours, nights and weekends, on a state salary for years. The people in the state of Utah are lucky to have her."

The award to Chancellor was unanimous, Rathbun said. "We polled the 200 lawyers in our section for suggestions. It wasn't even a vote. It was a unanimous acclamation."



Chancellor said she couldn't be more proud. "It was quite an honor to be recognized by the ENREL Section of the Bar because many of its members are long-time practitioners of environmental law," she said.

### **Chancellor's Insight into PFS**

"December 26, 1996 is the date when Utah received the first inkling that it may become the dumping ground for spent nuclear fuel," Chancellor wrote in an article for the Attorney General's newsletter. "On that date, (PFS) signed a lease for 820 acres of land on the Skull Valley Indian Reservation. It was not until March 1997, however, that Utah fully understood the breadth of the PFS proposal."

It was then that Chancellor devoted her time exclusively to challenging the license application before the U.S. Nuclear Regulatory Agency (NRC). Prior to that time, she worked representing the various divisions of the Department of Environmental Quality. Chancellor joined the AG's Office in 1989.

During the years of PFS litigation, the state's core legal team consisted of Chancellor, Special Assistant Attorney General Connie Nakahara, and paralegal Jean Braxton.

In contrast, PFS hired an army of high-profile Washington, D.C. attorneys.

Chancellor, however, said Nakahara's skills were invaluable. Nakahara, who has a degree in civil engineering worked many years in the Division of Solid and Hazardous Waste before obtaining a law degree. "She combined her legal and engineering skills in the technically charged PFS proceedings before the NRC," Chancellor said.

The state also sought the assistance of Assistant Attorney General Laura Lockhart, with her expertise in administrative law. Environmental Division Chief Fred Nelson, working with the Division of Water Quality, was able to persuade PFS to commit to install a water pollution control system. Assistant Attorney General Jim Soper took charge in challenging the safety of the facility given the proximity to Hill Air Force Base's Test and Training Range. Successful arguments persuaded the NRC's Atomic Safety and Licensing Board to initially rule that the proposed PFS facility was unsafe because of the uncertainty of a fighter jet crashing into it. In a later ruling, a split 2-1 decision, sided in PFS's favor.

"One of the most significant events in Utah's opposition to the PFS project was the passage of the wilderness legislation," Chancellor noted. "Now that part of PFS's proposed rail route would be located in a wilderness area, PFS was forced to turn to its other alternative: intermodal transfer of nuclear fuel casks from rail cars to oversized heavy haul trucks. Then, shortly after passage of the wilderness legislation, the Bureau of Land Management (BLM) called for public comments on whether PFS's use of public lands for its intermodal operations near I-80 and Skull Valley Road was in the public interest."

Despite the uncertainty of transportation to the PFS site, the NRC on Feb. 21, 2006 issued PFS a license to store 4,000 casks of spent nuclear fuel on the Skull Valley Indian Reservation.

Even so, support for the PFS project was diminishing, Chancellor noted. PFS members were bailing out, having built their own on-site storage facilities near their reactor sites. The major setback came on Sept. 7 when the Department of the Interior rejected the lease agreement and the intermodal operation.

Still, Chancellor is cautious and not about to declare victory.

“Nevertheless, as PFS still has a license from the NRC, it is important that the State be diligent in pursuing its federal appeal of the NRC licensing decision and in monitoring activities relating to the PFS project and the transportation of spent nuclear fuel,” Chancellor said.

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## **DEQ Supports Passage of Three Bills in 2007 Session**

The Department of Environmental Quality (DEQ) is seeking passage of three bills during the 2007 Legislature that essentially would improve the way the Department safeguards public health and the environment.

Rep. Ronda Menlove (R-Garland) is sponsoring a bill that would make a technical correction to the so-called “tolling” provisions of an administrative enforcement proceeding to cover DEQ programs not covered under the law. The Hazardous Substances Mitigation Act, Used Oil Management Act and the Waste Tire Recycling Act would be added to the provision giving the Department the ability to “toll” or delay seeking resolution in court in a dispute on a potential violation of one of these acts.

Bill Sinclair, deputy director of DEQ who keeps track of legislation during the session, said, “Other DEQ programs are currently covered under the tolling provisions; this bill would simply add the three that aren’t.”

Rep. Patrick Painter (R-Nephi) is sponsoring a bill that would amend language to give the Water Quality Board and the Drinking Water Board more flexibility in funding, either with loans or grants, studies and activities that will protect the waters of Utah. For instance, the funding could be used to study a water issue, thereby reducing the cost or improving the quality of water resources.

“I think this is going to be good legislation,” said Sinclair. “This will allow some flexibility to the Water Quality Board when providing loan monies to wastewater treatment facilities.”

There may be controversy with legislation that would establish a perpetual care fund for commercial hazardous waste facilities like Clean Harbor’s Grassy Mountain landfill. EnergySolutions’ low-level radioactive waste facility has such a fund currently in place. The fund would be used to pay for problems that surface years after the facilities close. In Clean Harbor’s case, it would provide about \$2.6 million to address environmental problems that occur more than 30 years later. At EnergySolutions, the fund would be closer to \$93 million to cover problems such as radioactive leaks into the environment if they occurred more than 100 years after the closure of the disposal site.

Members of the Natural Resources, Agriculture and Environment Interim Committee decided in November that the perpetual care funds were unnecessary and rejected the recommendations altogether.

EnergySolutions has stated that it would support leaving the existing perpetual care fund for their facility as is, which means the company would continue to pay the \$400,000 annual payment to the fund.

In addition to those bills, Sen. Scott McCoy (D-Salt Lake) is hoping to pass legislation that addresses the recycling and disposal of electronic waste, a growing problem in Utah and across the nation. McCoy is working with the Recycling Coalition of Utah, along with DEQ, and other stakeholders.

Another 35 bill titles deal with various environmental issues, from tax credits for alternative power generation and tax incentives for fuel efficient vehicles to a state declaration for the first week of May to be recognized as “Water Week.”

The Legislature convened Jan. 15 for a 45-day session that ends Feb. 28.

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## **Governor’s Budget Includes Key DEQ Projects**

Gov. Jon Huntsman, Jr. has proposed a \$10.7 billion budget for next year that would provide additional General Fund money to the Department of Environmental Quality (DEQ) to help assess mercury contamination and prepare the state to meet new tougher federal air standards.

“The Governor recognizes our challenges in DEQ,” said Dianne Nielson, executive director of DEQ. “We appreciate his support and are hopeful the 2007 Legislature will fund our requests.”

The Governor proposes investing \$66,500 from the General Fund for fiscal year 2007-08 and another \$147,100 ongoing money in order to help identify and address the sources of mercury pollution. In 2006, several fish and duck consumption advisories were issued after testing certain species in various Utah waters showed unhealthy levels of mercury. A multi-agency stakeholder group is developing strategies to address the problem. Even so, more fish advisories are expected next year and additional monitoring is needed in future years.

In addition, Huntsman proposes a one-time \$1.6 million from the General Fund to help pay for new monitoring analysis, and modeling equipment that will enable the Division of Air Quality to better prepare for tougher air quality standards recently imposed by the U.S. Environmental Protection Agency. On Dec. 18, 2006 new standards for fine particulate matter known as PM2.5 went into effect, lowering the 24-hour average from 65 micrograms per cubic meter (ug/m<sup>3</sup>) to 35 ug/m<sup>3</sup>. Much of the Wasatch Front will be unable to meet the new standards. The funds will enable the Division to better define the areas of high pollution sources of PM2.5 and begin to identify strategies to reduce pollution and attain and maintain the PM2.5 standard.

During the 2007 Legislature’s 45-day session, which begins Jan. 15, lawmakers will work with the Governor to finalize a budget that includes a \$1 billion-plus surplus due to a robust economy.

Huntsman’s budget also recommends \$20 million for a 3.5 percent cost of living increase to state employees. Another \$14.3 million has been set aside for discretionary salary increases for state agencies, to identify areas where salary adjustments are needed and reward exceptional performance.

“The discretionary money affords the Departments an opportunity to provide salary increases to deserving employees and allow them to move up the ladder,” said Dan Brentel, director of DEQ’s Office of Human Resource Management.

DEQ receives just a small percentage of financing from the General Fund. With the proposed increases, DEQ would receive 27 percent of its budget from the General Fund. The remainder of DEQ’s overall budget is funded by a combination of federal funds (33 percent), restricted funds (21 percent) and collections (19 percent).

Besides the additional funding from the General Fund for mercury assessment and air quality equipment, the Governor's budget also includes increasing the Hazardous Substance Mitigation Fund, managed by the Division of Environmental Response and Remediation, with \$400,000 one-time restricted funds to help pay for emergency cleanups. DEQ is seeking an appropriation to cover the state's share of environmental cleanups at Superfund sites and emergency response cleanups.

The Governor has recommended the Department be funded as follows:

- Water Quality - \$10.8 million
- Air Quality - \$10.8 million
- Solid and Hazardous Waste - \$7.6 million
- Environmental Response and Remediation - \$7.5 million
- Executive Director's Office - \$6.3 million
- Drinking Water - \$4.2 million
- Radiation Control - \$3.4 million

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## **Hydrologist Finalist for Work to fight Nuclear Waste**

Helge Gabert, an environmental scientist for the Division of Solid and Hazardous Waste for 11 years, was a finalist for the Governor's Science and Technology Medal.

Although the award was given to Theron Miller, environmental scientist with the Division of Water Quality, Gabert's scientific work on the groundwater issues relating to a proposed nuclear waste storage facility on the Skull Valley Band of Goshute Indian Reservation was also worthy of recognition.

"It was very close. Scientifically, Helge was a very strong candidate," said Dr. Greg Jones, state science advisor. He and the State Advisory Council on Science and Technology selected the recipients in various fields of technology, government, education and academic research for distinguished service to the state.

Don Verbica, a section manager with the Division of Solid and Hazardous Waste, nominated Gabert for his role in serving as a technical advisor to the state's legal team regarding hydrologic and groundwater issues as it relates to Private Fuel Storage's proposal to locate a nuclear waste storage facility on the Skull Valley Goshute reservation in Tooele County.

"The hydrology in Skull Valley is not well defined," stated the nomination. "Consequently, Helge relied heavily on his (local) expertise in Wasatch Basin hydrology to evaluate the hydrologic connection between the aquifers and the surface soil at the proposed site. Helge raised a number of substantive technical issues that were not adequately considered by the company's (Private Fuel Storage) eastern trained hydrologists. PFS was forced in part, to address many issues raised by Helge.

As a result of Helge's comprehensive evaluation, PFS agreed to install a groundwater monitoring system, conduct groundwater studies and mitigate damages.

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## Leadership Grads Produce DEQ's First Environment Report

After a year long effort, the Department of Environmental Quality's Leadership Development Group in January released the first-ever Utah Report on the Environment for 2006.

The report highlights the environmental progress made in air, land and water quality over the last few decades. It also includes discussions on the environmental challenges facing the state, such as mercury contamination that affects all aspects of Utah's landscape. More importantly, it highlights the successes of environmental improvements as a result of partnerships with local governments, individuals and businesses.

The Leadership Group is comprised of an employee from each Division. Under the leadership of Brad Johnson, director of the Division of Environmental Response and Remediation, the group led efforts to produce the report intended to provide the general public with an understanding about Utah's environment while hopefully shaping discussions with elected leaders on the challenges ahead.

The report was edited by Donna Kemp Spangler, public information officer for DEQ. "Donna facilitated the group's understanding of the presentation of the report, and the preparation and design that contributed to the public's understanding of the information," said Dianne Nielson, executive director of DEQ.

"Our objective with this project was to find something unique that would be an ongoing improvement to DEQ that wouldn't end up collecting dust on a shelf," said Harry Campbell, environmental engineer with the Division of Water Quality. "Our group took the leading role in producing the first DEQ annual report. Subsequent DEQ annual reports will likely follow the pattern of this one."

Other members are: Jon Black, environmental engineer with the Division of Air Quality; Jeff Emmons, environmental scientist with the Division of Solid and Hazardous Waste; John Hultquist, a section manager for the Division of Radiation Control; Kate Johnson, environmental scientist with the Division of Drinking Water; and Jason Wilde, environmental scientist with the Division of Environmental Response and Remediation (DERR).

It wasn't an easy process. Each member drafted sections of the report, by sometimes having to work with other sections within their Divisions in order to gather appropriate information. Then, mid way through the process, Wilde, an enlisted serviceman, was deployed to Afghanistan leaving others to pick up where he left off.

"I think this was a valuable exercise for everyone involved," added Brad Johnson. "We all learned a lot about each Division and how to better communicate to the general public."

Kate Johnson agreed. "I thought it went well," she said. "We ended up with a product we can all feel proud of."

The group hired graphic artist Larry Clarkson of Clarkson Creative to design the report. "I was very impressed," he said. "It was well written and I learned a lot about the current state of the environment. It was a fun project for me."

This group is part of an overall Leadership Development Training program intended to provide the skills to employees to prepare them for a leadership position.

Besides a group project, participants must prepare a brown bag presentation, complete leadership development classes and provide book reports on selected works that focus on leadership skills. Completion of the course takes two years. New classes begin in January of each year.

“The group project was a good one. I’m truly happy to be apart of this project,” said Hultquist. “A State of Environment report is something of value to the public and community that helps citizens of Utah understand who we are and what we do. I only hope readers will provide their comments and feedback to help DEQ to develop an even better one in 2007.”

The report is available on the Internet at [www.deq.utah.gov/envrpt](http://www.deq.utah.gov/envrpt).

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## **Miller Receives Prestigious Science Medal**

Theron Miller, a Ph.D. scientist with the Division of Water Quality, was awarded the prestigious Governor’s Science and Technology Medal for his scientific work on Farmington Bay in understanding the impact of nutrients to the wetlands and the Great Salt Lake.

“We are pleased and proud of the employees who have been recognized for their outstanding achievements,” said Dianne Nielson, executive director of DEQ. “Miller’s research on Farmington Bay will not only determine whether the wetlands are currently impaired for waterfowl and shorebird support, but will provide important information as to the thresholds of nutrient concentrations and future management of Farmington Bay.”

Gov. Jon Huntsman, Jr. will honor Miller, along with seven other recipients for their achievements, at a ceremony on January 4 at the Utah Museum of Natural History on the University of Utah campus.

“I am honored to receive the award,” said Miller. “In the process, I have worked with a superb group of people who make up the Technical Advisory Committee dedicated to developing nutrient criteria that will protect the Great Salt Lake and its wetlands.”

Miller’s ability to bring stakeholders together impressed the judges.

“In combination with his scientific accomplishments, the effort in bringing various funding partners together in order to move projects forward was really the piece of Theron’s work that was very significant in him being awarded the medal,” said Dr. Greg Jones, state science advisor.

In 2002, Miller raised concerns about the lack of a water quality assessment for the Great Salt Lake. He worked to secure grants and research funds to study the problem of how much nutrients would support Farmington Bay. He organized and chairs a Technical Advisory Committee, consisting of scientists, technicians, and stakeholders from local agencies, Kennecott Utah Copper, conservation groups, academia and consulting companies. By 2004, detailed research began, aimed at understanding the link between water and sediment quality. More recently, Miller has begun to develop measurement parameters that link habitat and forage availability to the extremely valuable waterfowl and shorebird populations that nest and “refuel” in the Great Salt Lake and its wetlands.

Walt Baker, director of the Division of Water Quality, noted the significance of Miller’s work, which will help set the framework for important decisions ahead.

“There is great importance to Miller’s work,” Baker said. “A long-standing question has been whether nutrient loads being discharged into the Jordan River or directly into Farmington Bay are exceeding the assimilative capacity of the waters and causing degradation. Theron’s work will help answer that question and will drive the implementation of protective standards.”

This is the second consecutive year a Department of Environmental Quality employee has been recognized for outstanding scientific achievement in Government. Last year, Loren Morton, a section manager for the Division of Radiation Control, was awarded the science 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.

In addition, Helge Gabert, an environmental scientist for the Division of Solid and Hazardous Waste, was a finalist for the award. (See adjacent story)

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## **Scout Troop Highlights Dangers of Indoor Radon Gas**

### **Gov. Huntsman Declares January “Radon Action Month”**

To Boy Scout Troop 115, radon is not a video game but an opportunity to contribute to public health.

The Cottonwood Heights Boy Scout Troop has spent the last few months producing an educational video on the dangers of indoor radon, an odorless gas and the second leading cause of respiratory problems, second only to smoking. The Troop will debut the video at a community meeting in January.

“Not many people know about radon,” said Matt Easton, 11, of Troop 115. “It is really dangerous and we thought it would be good to do something about radon so we can get a better understanding of it.”

The Troop needed an environmental project to receive the Hornaday Award, named after William Hornaday, the first curator of the New York Zoo and noted conservationist.

Scoutmaster Steve Chambers, vice president of Zions First National Bank, researched some options.

“I started to call around to places to see if there was anything they needed help with. Various organizations suggested projects like cleaning up highways or pulling weeds, which are great projects but not significant enough. So I contacted the Department of Environmental Quality and Leah Ann Lamb, director of the Office of Planning and Public Affairs, gave me some suggestions, including radon. I liked that idea because it was something we could do within the Troop’s boundaries and benefit our neighborhood.”

“Radon is such an important issue,” Lamb said. “Since most people spend the majority of their time at home, home is where radon levels may be of concern. The Division of Radiation Control (DRC) has an Indoor Radon Outreach Program that I thought it would be a great resource for the Scouts.”

January is National Radon Awareness Month. Gov. Jon Huntsman, Jr. also has declared January “Radon Action Month” to encourage Utah homeowners to test for radon.

Radon occurs naturally from decaying radium and can build to unhealthy levels when it seeps through foundations into a home. The U.S. Environmental Protection Agency's (EPA) current action level for residential radon is 4.0 picocuries per liter.

"Testing for radon is the only way to find out if a radon problem exists," said John Hultquist, health physics support manager for DRC who oversees the state's Indoor Radon Program, funded by a grant from EPA. "About 900 radon tests are conducted each year, resulting in 150 mitigation systems installed in households in 2005," he added.

Philip Griffin, program coordinator for the Indoor Radon Program, is excited to work with the Scouts to increase awareness. "It is efforts like these that really make a difference," he said.

Environmental officials say radon may cause up to 20,000 lung cancer deaths each year.

Matt's mother, Liz Easton, admits she didn't know much about radon before her son enthusiastically embraced this project. Her husband, however, helped a family member install a radon mitigation system.

"It is fun to see Matt so interested in this," Liz said.

To Matt, it's a matter of life and death. "I hope people will learn more about radon," he said. "Maybe it will lead to fewer deaths."

For more information, visit: <http://www.radon.utah.gov>.