State of Utah

Department of Environmental Quality

Richard W. Sprott
Executive Director

William J. Sinclair
Deputy Director

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

MEMORANDUM

TO: The Department of Environmental Quality

FROM: Richard W. Sprott, Executive Director

DATE: August 27, 2007

SUBJECT: Signature Authority for Environmental Covenants

BACKGROUND

The purpose of this memorandum is to designate signature authority under the Uniform Environmental Covenants Act ("Act"). Under the Act, "Agency" means the Utah Department of Environmental Quality or other state or federal agency that determines or approves the environmental response project under which the environmental covenant is created. Utah Code Annotated. § 57-25-102. An environmental covenant must be signed by the agency, among others. Utah Code Annotated. § 57-25-104(1).

Under this definition of agency, there is legal support to justify signature authority for several persons acting in several capacities. For example, the executive secretaries of the Water Quality Board and the Solid and Hazardous Waste Control Board may determine or approve an environmental response project under which the environmental covenant is created. See Utah Code Annotated §§ 19-5-106(8), 19-6-107(1)7)(11), 19-6-420, etc. . . . Therefore, the executive secretaries of those boards have apparent authority to sign an environmental covenant. Similarly, there is implied authority for certain division directors to sign environmental covenants based upon their authority to administer various statutes under section 19-1-105 of the Utah Code Annotated. For instance, the Division of Environmental Response and Remediation is authorized to administer Title 19, Chapter 6, Parts 3 and 4; the Division of Solid and Hazardous Waste, is authorized to administer Title 19, Chapter 6, Parts 1, 2, and 5; and the Division of Water Quality is to administer Title 19, Chapter 5, and each division is under the immediate direction and control of a division director. Other arguments supporting other signature authorities might also be made.

For the sake of clarity to the regulated community and for coordination purposes for department staff, and to avoid potential legal challenges concerning signature authority, the Executive

Director hereby issues the following directive designating signature authority based upon his authority to administer and supervise the department and to coordinate policies and program activities conducted through boards, divisions, and offices of the department. Utah Code Annotated. § 19-1-202.

DIRECTIVE

The Executive Secretary (UST) of the Solid and Hazardous Waste Control Board shall sign environmental covenants for response projects conducted pursuant to the Underground Storage Tank Act and pursuant to its MOU with DWQ.

The Director of the Division of Environmental Response and Remediation (DERR) shall sign environmental covenants for environmental response projects conducted pursuant Hazardous Substance Mitigation Act, the Voluntary Cleanup Program (when oversight is provided by DERR) and CERCLA (when there is state oversight and participation).

The Executive Secretary (DSHW) of the Solid and Hazardous Waste Control Board shall sign environmental covenants for environmental response projects conducted pursuant to the Solid and Hazardous Waste Act and other statutes that the Division of Solid and Hazardous Waste oversees.

The Executive Secretary of the Water Quality Board shall sign environmental covenants for environmental response projects conducted pursuant to the Water Quality Act.

In addition, for administrative convenience, the Executive Director or Deputy Director may sign an environmental covenant for any environmental response project for which there was state oversight and participation instead of one of the above-named designees.