

State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** Aug. 1, 2012

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda item F, Action item: Clean Water State Revolving Fund bond sale approval and resolution  
Aug. 23-24, 2012, EQC meeting

**Why this is important** Clean Water State Revolving Fund grants provide needed funding for local municipalities to maintain or upgrade wastewater facilities. These federal grants require state matching funds. This item asks the commission to adopt a resolution authorizing the state treasurer to issue \$10 million of Pollution Control Bonds to match federal grants during the 2011-13 biennium.

**DEQ recommendation and EQC motion** DEQ recommends that the Oregon Environmental Quality Commission adopt the resolution in attachment A to authorize DEQ to request and the state treasurer to sell \$10 million in bonds for Clean Water State Revolving Fund matching funds during the 2011-13 biennium.

**Background** In 2011, the Oregon Legislature approved DEQ's policy package that proposed issuing \$10 million of Pollution Control Bonds for Clean Water State Revolving Fund match and funding the debt service from accumulated interest on Clean Water State Revolving Fund loans. DEQ is currently targeting November 2012 as the date for the bond sale.

**Commission authority** Although the Legislature authorized the bond sale in the bond bill (2011 HB 5005), under ORS 286A.025, state agency issuance of bonds requires a resolution of the agency's governing body.

**Key issues** To avoid the need for specific provisions that would increase the market rates for the bonds, any single Clean Water State Revolving Fund bond issue is limited to just under \$5 million. Also, the issuance of bonds for Clean Water State Revolving Fund match will be conditional on federal commitments to provide additional grants to the program. Current federal commitments will support, at a minimum, the issuance of \$5 million of bonds in November 2012. Whether to issue the remaining \$5 million of bonds in the spring of 2013 will depend on federal commitments at that time.

**Alternatives for commission action**      The commission could choose to take other actions with respect to the proposed bond sale:

1. Reduce the authorized issuance amount and require to DEQ to request additional authorization at a later date.
2. Not adopt the resolution.

**Next steps**      If the commission approves this action, DEQ will:

1. Begin planning with the Debt Management Division of the Office of State Treasurer for the bond sale, around November 2012 if conditions are favorable.
2. Return to a future commission meeting with a report on bond issuance and sale proceeds.

**Attachments**      A. Resolution Authorizing and Requesting Issuance of Bonds  
B. Summary information about the Pollution Control Fund and State Pollution Control Bonds

Approved:

Division: \_\_\_\_\_

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## **RESOLUTION AUTHORIZING AND REQUESTING ISSUANCE OF BONDS**

**Section 1. Findings.** The Oregon Environmental Quality Commission finds:

- A. ORS 286A.025 allows the Oregon State Treasurer to issue bonds for a state agency if the agency requests the state treasurer to issue the bonds.
- B. The Department of Environmental Quality has requested that the Environmental Quality Commission adopt this resolution authorizing DEQ to request the state treasurer to issue up to \$10 million of General Obligation Pollution Control Bonds during the 2011-2013 biennium to provide match for \$50 million of federal Clean Water State Revolving Fund grants.

**Section 2. Resolutions.** The Oregon Environmental Quality Commission hereby resolves:

- A. The Oregon State Treasurer is hereby authorized and requested to issue State of Oregon General Obligation Pollution Control Bonds, called Pollution Control Bonds, in a principal amount of \$10 million or such lesser amounts that the state treasurer determines, after consulting with DEQ's director or the director's designee, will be sufficient to provide funding for the Clean Water State Revolving Fund match and to pay costs associated with issuing the Pollution Control Bonds. The Pollution Control Bonds may be issued in one or more series at any time during the 2011-13 biennium, mature, bear interest, be subject to redemption, and otherwise be issued and sold upon the terms established by the state treasurer after consultation with the DEQ director or designee.
- B. DEQ shall comply with all provisions of the Internal Revenue Code of 1986, as amended that are required for interest on tax-exempt Pollution Control Bonds to be excludable from gross income under the code, and shall pay any rebates or penalties that may be due to the United States under Section 148 of the code in connection with the Pollution Control Bonds. The DEQ director or designee may, on behalf of DEQ, enter into covenants for the benefit of the owners of Pollution Control Bonds to maintain the tax-exempt status of the Pollution Control Bonds.

**Section 4. Other Action.** DEQ's director or the director's designee may, on behalf of DEQ, execute any agreements or certificates, and take any other action the director or the director's designee determines is desirable to issue and sell the Pollution Control Bonds and to provide funding for orphan site cleanup as described in this resolution.

## **Pollution Control Fund and State Pollution Control Bonds**

ORS 468.215 authorizes the Pollution Control Fund to separately account for the receipt and expenditure of State Pollution Control Bonds.

Article XI-H of the Oregon Constitution authorizes State Pollution Control Bonds. The article empowers the state “to lend credit for financing pollution control facilities or related activities, to provide funds for the purpose of planning, acquisition, construction, alteration or improvement of facilities for or activities related to, the collection, treatment, dilution and disposal of all forms of waste in or upon the air, water and lands of this state.” The article also allows funds to be advanced “by contract, grant, loan, or otherwise” to state agencies and local units of government, and the state to purchase financial instruments issued by units of local government, to take advantage of the state’s credit rating in financing pollution control facilities. Article XI-H was adopted in 1970 and amended in 1990.

### **Authorized uses of the Pollution Control Fund**

DEQ is responsible for the administration of the Pollution Control Fund. ORS 468.220 authorizes its use for several purposes, including:

- Financing municipal sewage treatment facilities or sewerage systems, as defined in ORS 468B.005, and related planning
- Financing local government solid waste disposal facilities and related planning
- Funding the Orphan Site Account for the cleanup of contaminated sites where the responsible party is either unknown, unwilling or unable to pay for necessary cleanup
- Funding the Sewer Assessment Deferral Loan Program Revolving Fund, which funds local government financial assistance programs associated with water pollution control projects, typically to homeowners who cannot afford increased assessments
- Providing matching funds for federal grants made available to capitalize the Water Pollution Control Revolving Fund, commonly called the Clean Water State Revolving Loan Fund.

### **Historical and current uses of the Pollution Control Fund**

DEQ used the fund in the 1970s and 1980s to finance solid waste disposal facilities and municipal sewage treatment facilities. Those debts have been retired. In the early 1990s, State Pollution Control Bonds were issued to provide funds to purchase debt issued by the cities of Portland and Gresham to finance water pollution control facilities, and to establish a Sewer Assessment Deferral Loan Program. As of 2004 all these bonds had been fully paid.

Bonds have been issued since the early 1990s primarily to provide funding for the Clean Water State Revolving Loan Fund, and the Orphan Site Account. The table on the next page shows the amounts issued and outstanding for each of these programs.

### **Repayment of bonds issued**

The Oregon Constitution, Article XI-H, allows for repayment of Pollution Control Bonds through an ad valorem tax to be levied on all taxable property in the state. The tax has never been levied, and bond debt has been serviced with diverse funding through repayments of loans from

the Water Pollution Control Fund, Assessment Deferral Loan Revolving Fund and the Clean Water State Revolving Fund; general and lottery fund appropriations; fees levied specifically to repay orphan site debt; payments of interest and principal from municipalities whose bonds were purchased by the state; and user fees on borrowers. Funds used for debt service, except general and lottery funds, are deposited to and expended from the Pollution Control Sinking Fund, as directed by ORS 468.230.

### **Accounting for bonds and debt service**

Proceeds from the sale of pollution control bonds are deposited to the Pollution Control Fund. Each bond issue is tracked separately. Similarly, funds received for repayment of bond issues, except general fund and lottery, are deposited to the Pollution Control Sinking Fund, and tracked by bond issue. Maintaining separate funds for bond proceeds and debt payments is standard government accounting practice. Some additional accounting practices are mandated by statute for the Orphan Site Account, at least in part to ensure that no cost recoveries from responsible parties are used for debt service. This additional control was established to ensure that bond administration meets IRS tests for tax-free bonds.

<b>Category</b>	<b>Purpose</b>	<b>Amount issued</b>	<b>Outstanding as of 06/30/2012</b>
Original "Pollution Control Bonds"	Grants and loans for solid waste disposal & municipal sewage treatment facilities	187,500,000	0
Special Assessment Improvement Bonds	To purchase debt issued by the cities of Portland and Gresham to finance water pollution control facilities	95,640,000	0
Sewer Assessment Deferral Loan Program	Local government financial assistance programs associated with water pollution control projects	5,500,000	0
Orphan Site Cleanup	Cleanup of contaminated sites where the responsible party is either unknown, or unwilling or unable, to pay for necessary cleanup	62,735,000	17,534,032
Clean Water State Revolving Fund Loan Program	Matching funds for federal grants made available to capitalize the Clean Water State Revolving Fund	53,615,000	20,815,968
<b>Total</b>		<b>\$404,990,000</b>	<b>\$38,350,000</b>