State of Oregon

Department of Environmental Quality Memorandum

Date: Nov. 28, 2011

To: Environmental Quality Commission

From: Joni Hammond, Deputy Director

Subject: Agenda item I, Action item: Orphan bond sale and reimbursement resolution
Dec. 15-16, 2011 EQC meeting

Why this is important

The bond sale and reimbursement resolution provides authorization for DEQ to issue Pollution Control Bonds for industrial orphan site cleanup during the 2011-13 biennium and a declaration of intent to reimburse with sale proceeds and expenses paid from other funding sources prior to bond issuance. This resolution will enable DEQ to meet match requirements for Environmental Protection Agency Superfund expenditures and to continue a reduced level of orphan site cleanup for approximately one year until the bond sale.

DEQ recommendation and EQC motion

DEQ recommends that the Oregon Environmental Quality Commission adopt the Resolution Authorizing and Requesting Issuance of Bonds and Declaring Intention to Reimburse, Attachment A to this staff report.

Background

In 2011, the Oregon Legislature approved DEQ's policy package that proposed issuing $6.74 million of pollution control bonds for orphan site cleanup and funding the debt service with hazardous substance possession fees. Possession fees are currently used to pay half of the debt service on the first two orphan bonds issued in the early 1990s. That debt will be paid off in 2014, leaving about $804,000 for debt service on the new issue during the 2013-15 biennium and about $1,038,000 in subsequent biennia. The approved budget authorizes DEQ to issue bonds in an amount that can be supported by the available fee revenue, under market conditions in existence at the time of sale. DEQ is currently targeting November 2012 as the date for the bond sale.

The approved policy package indicated that DEQ would fund orphan expenditures until the bond sale with the hazardous substance remedial action fee, or HSRAF, and reimburse HSRAF with bond proceeds. IRS regulations for tax-exempt bonds require the issuing body, or its representative, to make an official declaration of its intent to use bond proceeds for reimbursement. Expenditures can be reimbursed for a period of 60 days prior to the date of declaration and reimbursement must occur within 18 months of the original expenditure. DEQ has estimated orphan site spending needs from November 2011 through December 2012 at $1.5 million. The first $750,000 of the expenditures to be reimbursed will come from orphan site cost recoveries - funds previously expended on orphan cleanup that are recovered, typically through settlements with responsible parties or prospective purchaser agreements. Orphan cost recoveries must be spent on orphan-related expenses, but their use is not as restricted as bond proceeds. Consequently, DEQ intends to replenish this fund with bond proceeds. The remaining $750,000 of reimbursable expenditures would be funded with HSRAF revenues, as described in the policy package.

The $1.5 million estimate includes a $205,000 payment to EPA to complete state match for Superfund expenditures at the Taylor Lumber and Treating site and about $375,000 for payments to contractors for operations and maintenance at several key sites where remedies have been installed, including Taylor Lumber, McCormick and Baxter, Lone Elk, Fashion Cleaners, Surgichrome and Keno. It also includes contractor costs for investigation work at emerging sites (St. John's Landfill, Ken Foster Farms, Port of St. Helens, Medford Area PCE and Lawndale Areawide, among others) and staff costs related to both operations and maintenance and investigation.

Despite uncertainty in the outlook for municipal bond markets, DEQ is recommending that the Environmental Quality Commission authorize and request the issuance of bonds a year ahead of the projected issue date. Maturity dates can be adjusted to produce a debt-service schedule that will match the available cash flow.

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. In addition, a declaration of intent to reimburse must be adopted by the bond issuer or its authorized representative, in accordance with the Internal Revenue Service title of the Code of Federal Regulations that governs tax-exempt bonds, specifically 26 CFR 1.150-2. The reimbursement declaration will give DEQ the authority to reimburse expenditures for bond-eligible purposes as defined in ORS 468.195 to 468.260.

Key issues

There are several types of risk that could affect DEQ's ability to reimburse the funds.. For example, municipal bond market conditions in late 2012 might be so unfavorable that a bond issue would be unwise at that time. There is also the possibility that the state's finances deteriorate to the point that the Legislature or State Treasurer suspends the authority to issue general obligation bonds.. In addition, DEQ is aware that in the past some industry segments have raised questions about the fairness of the requirement that they pay fees to support orphan cleanups. While the 2011 Legislature approved continued use of the fees for this bond sale despite this issue, there is a possibility the Legislature could reconsider the decision.

As a result, DEQ will be cautious spending the funds until it is more certain that the sale will proceed as planned. In particular, DEQ will be judicious in the expenditure of HSRAF fund balances, as those funds will be needed in future for other cleanup program purposes. However, authorization at this time will maximize the amount that can be repaid to the cost recovery and HSRAF funds.

Alternatives for commission action

The commission could choose to take other actions with respect to the proposed orphan bond sale and reimbursable expenditures:

1. Reduce the authorized issuance amount and require to DEQ to request additional authorization at a later date.

2. Defer adoption of part of the resolution.

3. Not adopt the resolution.

Next steps

If the commission approves this action, DEQ will:

1. Spend orphan cost recoveries on high priority orphan sites and as necessary, spend HSRAF funds after orphan cost recoveries are exhausted.
2. In the spring of 2012, begin planning with the Debt Management Division of the Office of State Treasurer for the bond sale, around November 2012 if conditions are favorable.
3. Return to a future commission meeting with a report on bond issuance, sale proceeds, and expense reimbursements.

Attachments A. Resolution Authorizing and Requesting Issuance of Bonds and Declaring Intention to Reimburse

Approved:

Division: ____________________________

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