

**EQRA Stakeholder Meeting
October 8, 2009
DEQ, Conference Room 101**

In attendance:

DEQ Staff:

Amanda Smith, Executive Director, DEQ
Bill Sinclair, Deputy Director, DEQ
Dennis Downs, Director, SHW
Brad Johnson, Director, DERR
Dane Finerfrock, Director, DRC
Craig Silotti, EDO, Finance
Scott Anderson, SHW
Craig Jones, DRC
Brent Everett, DERR

Stakeholders:

David R. Bird, Parsons, Behle, & Latimer
Tom Bingham, Utah Manufacturing Association
Nathan Rich, Wasatch Integrated
Dwayne Woolley, Trans-Jordan
State Representative Ronda Menlove
Scott Aitken, S.U.V.S.W.D
Dan Shrum, EnergySolutions
Tom Burrup, SL Valley Landfill
Glenn Eurick, Rio Tinto/Kennecott Utah Copper
Craig Hall, Chapman & Cutler
Kirk Treece, Allied Waste
John Ioannou, SL County Landfill
Kimberlee Willette, GOPB

Via Conference Call:

Phil Retallick, Clean Harbors
Fred Nelson, Attorney General's Office
Brian Allred, Legislative Research and General Counsel
Jeff Coombs, Tooele County Health Department
Tina Allen, Box Elder County
Rick Bailey, San Juan County

Agreements in Principle

- A. Review revised agreements
 - a. Waste Disposal Fees: designed to cover funding for the entire waste management program; not dedicated to specific function or site.
 - i. *David Bird suggested that the wording be changed to say, "designed to cover the entire State waste management program"*

- B. UCA 19-1-108(5) states: “In order to stabilize funding for the radiation program and the solid and hazardous waste control program, the Legislature shall in years of excess revenues reserve in the restricted account sufficient monies to meet departmental needs in years of projected shortages.” Wording has been added that states, “*The fund should continue to operate on that basis.*”
- C. Discussion at the last meeting whether to modify or not modify UCA 19-1-108 to address 4 areas:
 - a. The first \$400,000 goes back into the General Fund as free revenue to be spent the way the Legislature desires. At the last meeting there was consensus that this part of the statute be eliminated.
 - b. Hazardous Substances Mitigation Fund - \$400,000 may be allotted to this fund in order for DEQ to meet the superfund match that DEQ is required to provide on certain superfund project. At the last meeting there was consensus to retain this as it was and the language would say “*may*” and to modify the language in the statute to define its purpose.
 - c. \$200,000 was going to Public Safety for hazardous materials training. Public Safety has indicated that they do not need this and therefore, it will be eliminated.
 - d. 10% of the fees go to the county in which the facility is located. Consensus was that this will be retained.
- D. Going forward, all parties agree that future diversions of monies for purposes other than specified in 19-1-105 should not occur.
- E. FY 10 – DEQ has taken action to shore up the fund and stay in the black for this fiscal year. This is a one-time action that cannot be sustained for FY11 and beyond.
- F. FY11 – DEQ and stakeholders will work towards agreement of reasonable steps to ensure the continuation of Department oversight of waste facilities in the State.

ACTION

- Tom Bingham stated that two actions need to be taken:
 - a. Establish a DEQ Operating Policy that reflects what has been agreed upon
 - b. Statutory changes that need to be made. Legislation needs to be drafted and sponsors obtained.

Legislation – Waste Fee Amendments for Stabilizing EQRA FY 11 and Beyond

Legislation – waste fee amendments:

Four Key Components

- 1. Disbursements from EQRA Options to Stop the Bleeding
 - a. Lines 49-56 – that states that in each fiscal year the first \$400,000 collected from all waste disposal fees listed shall be deposited in the General fund as free revenue. The balance shall be deposited in the restricted account created in this section. *At the last meeting there was consensus that this should be eliminated, which may cause concern for the Governor and Legislative budgets because there would be \$400,000 less*

coming into the General Fund. At this point, DEQ does not know if this will be included in the Governor's budget or not. Bill Sinclair indicated that as we proceed with the legislation, the stakeholders will carry the burden of making this happen.

David Bird stated that the stakeholders view this as a fundamental point. This provision caused the problem in the past and the stakeholders agreed at the last meeting that it needed to come out. If they need to meet with the Governor's office, they will do so.

ACTION:

- Representative Menlove will draft the legislation and will open the bill file. She will recommend language and will do what the stakeholders have agreed to. Brian Allred will participate in drafting the language.
- David Bird motioned that the stakeholders recommend that the language come out of the statute and that the Governor consider that as part of his budget recommendation. Motion was seconded by Tom Bingham and passed unanimously by the stakeholders present at the meeting and participating by conference call.

b. Lines 57-58d – In earlier meetings it was discussed that there was a need for better clarification of the use of the \$400,000 if it was determined there was excess money that could be put into the Hazardous Waste Mitigation Fund. Language reads, *“The Hazardous Substances Mitigation Fund, up to \$400,000 for purposes set forth in Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act).* The underlined wording will be eliminated. Wording will be added, *“Future monies to match”* . . . This clarifies that this is a “may” kind of disbursement and not a “shall”. It further states that a request for this funding on a fiscal year basis will be made after review of end of year fund balance by the Executive Director of the Department. *As requested by David Bird, it should be noted that this change does not make any changes in the way this has been done in the past.*

Representative Menlove stated that the more specific language, the less opportunity there is to move funding from the account.

c. Lines 67-71 talks about the \$200,000 that the Legislature “may” annually appropriate. DEQ has spoken with public safety and there is no longer a need for this money to come out of the EQRA for their purposes. Consensus at last meeting was that this be taken out of the legislative statute.

d. Lines 154-157 discusses the 10% allocation of the fees, and describes the purpose for which the county may use the fees. Consensus at last meeting was that this part should be retained.

2. **Moving Fee Adjustments from a Statutory to a Fees Schedule Basis**
- a. At the last meeting there was discussion about this, but a consensus was not asked for. There was discussion as to if fee changes were made, discussions would have to be had with the facility operators. There is a process which includes a hearing and public comment period, and then the Legislative Appropriations Subcommittee approves changes to the fee schedule. DEQ would like to move forward with having disposal fees placed into the fee schedule

Discussion

- Dan Shrum, Energy Solutions, expressed concern that DEQ would take the consumer price index and move the fees every year, which would be a nightmare for operators.
- Bill Sinclair stated that the process would be the same one that is followed when changes are made in fees. There would be a discussion with the operator on the increase of fees and it would be put in the DEQ fee schedule. A public hearing is held on the DEQ fee schedule in which any interested party may provide verbal or written comments for consideration before finalization of the fee schedule. Copies of the fee schedule are available with changes highlighted prior to and at the hearing. The agency determines whether or not they want to make any changes. The fee schedule then goes before DEQ's Legislative Appropriation Subcommittee. If there are questions from the committee those will be discussed. If requested changes are not made as a result of the DEQ public hearing, individuals that still have concerns can go the Legislature and make their recommendation there. The Subcommittee votes to pass out the fee schedule for consideration by the full Legislature.
- There was a recommendation that the process of informing the facilities of any fee changes prior to moving forward with a change to the fee schedule be put into the legislation. Bill Sinclair indicated this was the process that DEQ has committed to use and had no objection to putting the commitment in the legislation. Representative Menlove asked if language could be put in the legislation that assures this process would take place.
- Brian Allred stated that if this is something we wanted to put in statute, this would not be the place to do it since it is not specific to DEQ. There might be a better place in Title 19 (DEQ statute).

3. Adjustments for FY2011

- How do we address the shortfall? Basically there are several approaches to this in terms of getting to where we need to get to.
 - DEQ submitted a “negative” building block of \$350,000 in the Governor's budget reducing the base budget to \$6.8 M.

- Between last meeting this one, DEQ has met with each of the sectors on potential fee increases
 1. Hazardous Waste Fees
 2. Radioactive waste fees
 3. PCB fees
 4. Nonhazardous Solid Waste Fees

Discussion

- Phil Retallick expressed concern of increasing the fees. The waste fee amendment bill reflects a change in the tonnage fee from \$28 to \$31 per ton.
- Specialty waste:
 - K061 – Electric Arc Furnace Dust – reduced from \$28 to \$5 per ton.
 - F999, P999 - Chemical Demilitarization residual waste - would have a surcharge applied. The Division of Solid and Hazardous Waste will be meeting with the Army and its contractor, E, G, & G next week. There is potential that there would be a large amount of this waste coming into Utah commercial hazardous waste facilities.
- Radioactive Waste Fees
 - 15 to 30 cents per cubic foot
 - \$28/ton to \$31/ton for mixed waste
 - \$4.75 ton to \$14.75/ton for PCB/radioactive
 - Phil stated that DEQ has been open, honest and constructive. He stated that Utah is the highest in terms of fees charged compared to other states with the exception of California.
 - Dwayne Woolley stated that if there is any change in fees, an email to all parties would be appropriate. Representative Menlove assured the stakeholders that as they start working on legislation they will be included in the emails and will receive drafts.
- PCB fees
 - \$4.75 to \$14.75/ton – Bill Sinclair indicated that there is going to be a great deal of this waste coming to the commercial facilities potentially because of stimulus funding for cleanup projects. It will be short term and then we won't see much of it again, so we will be taking advantage of this as it comes in.
- SHW Fees
 - This section will require an extensive rewrite. DEQ would like to have all fees uniform.
 - Have suggested \$.30/ton, but there will be a 6-month period before the fee schedule is changed again.
 1. Potentially DEQ could charge for ½ year of the annual fee or eliminate the annual fee and start with the new fee of \$.30/ton at the start of the FY11 fiscal year. DEQ is recommending the \$.30/ton at the start of the state fiscal year, so the operators could transition easily to the new fee.

2. Industrial waste and construction/demolition waste remain the same, but apply across the board.
 - Discussion:
 - Current definition of commercial is to say we are disposing something for someone else. This does not include facilities that are disposing of their own waste.
 - Does industrial waste include manufacturer waste? Could it be co-mingled with industrial waste? It is very difficult to track once co-mingled.
 - Need better definition of what the waste is when section is rewritten.
 - Stakeholders agreed to eliminate the tiered part.
- Payment of solid waste fees basis yet undecided.
 - Payments come in now on a monthly basis. Some municipalities indicated that this would be problematic for them. Quarterly would be better.

4. Other considerations to the draft Waste Fee Amendments

- Applies an annual adjustment to disposal fees based on the consumer price index.
 - Bill Sinclair stated that if we put something in the statute we would have to clarify how we are making the determination, and then the fee schedule would have to be increased according to the consumer price index.
 - Phil Retallick stated that since their contracts are not multi-year, and to avoid going through this change of fees process every few years, we could do the consumer price index increase, so we would not have to come back and have this discussion every year.
- Places a cap on the amount of excess revenue allowed in the EQRA
 - In good times, manufacturing and other sectors generate more waste and fees and CPI goes up. A suggestion was made to add some language that would address the upside as well.
 - Phil Retallick stated that states involved that have a CPI adjustments have a legislative cap. Rebates have been offered.
 - Representative Menlove stated that anytime there is a fund that the Legislature can see that has money in it, it becomes attractive. It is important to find a way to establish a fund that stays stable and does not gain huge amounts of funding.
 - Dwayne Woolley asked that since the CPI concept is intended to keep the fund solvent, could a second part of that state that if the fund reaches \$4 M then it would go up by CIP and down by need?
 - David Bird stated that the language read, instead of “that you have consultation with facilities “, that it read “after consultation and considering the fiscal soundness of the fee, the fee schedule shall be set”.

- Representative Menlove stated that she wasn't sure the Legislature would support a \$4 million fund sitting there.
- Comments
 1. If we are serious about pulling out the \$4M why don't we put the facilities back into the budget and charge a fee per service?
 2. If we can do it as dedicated credit and have to pay our own way, we are seen as a good source of revenue.
 3. EnergySolutions has a problem with taking this out of legislative control. Dan Shrum stated that if we are going to do the CPI can we have "*shall be*" replaced by "*may be*", and we would like to say that an easier solution would be for the individual facilities to pay for the oversight they get and pay a flat fee. ES will pay more and it will impact volume and tonnage disposed. This would solve the issue of additional funds being left over at the end of the year.
 4. Amanda Smith stated that the State is not wedded to the \$4M, but going lower than that puts DEQ in a precarious situation.
 5. Representative Menlove suggested that there be some exploration about how other agencies may be handling situations where their funding varies so we can explore ways of encumbering that money so that it is not attractive to anyone using it.
 6. Phil Retallick stated that other states have come up with creative language; i.e. ECOS or ASTSWMO – ask them how they construct their fee schedule to deal with changing financial conditions in the state.
- A report on the adequacy of the EQRA shall be prepared by the Executive Director of the Department by September 1 of each fiscal year and submitted to the Governor's Office of Planning and Budget and the Legislative Fiscal Analyst. This has not been visible in the past.

Follow-Up

1. Have follow-up discussions regarding legislation. By opening the bill file it will allow DEQ to work with each entity to ensure that all concerns are heard.
2. Recognize the need to help Representative Menlove as this proceeds.
3. Goal of Legislation would be to maintain control of it as it goes through the process. Make decisions before it goes to Committee. Keep communication open.
4. It will be DEQ's bill. DEQ has informed the Governor's office of the importance of this bill and has not been told no. If, however, parts of it are not in the Governor's budget (such as the elimination of the \$400,000 to the General Fund), DEQ cannot push it.
5. All information that has been provided will be on DEQ's web site in the near future.
6. The Department will continue to meet with and have open dialogue with all stakeholders.