

**EQRA Stakeholder Meeting**  
**June 18, 2009**  
**Room 201, DEQ Building #2**

In attendance:

Bill Sinclair, Executive Director, DEQ  
Dwayne Woolley, Trans-Jordan  
Dan Shum, Energy Solutions  
Scott Anderson, DSHW  
David R. Bird, PB&L  
Tom Butnup, SL Valley Landfill  
Jeff Coombs, Tooele County Health Department/SHW Board  
Colleen Johnson, Tooele County Commission/Radiation Control Board  
Tom Bingham, UMA  
Glenn Eurich, Kennecott  
Todd Bingham, Utah Mining Association  
Teresa Gray, SL Valley Health  
Donny Adams, SL Valley Health  
Craig Hall, Chapman & Cutler  
Craig Jones, Radiation Control  
Nathan Rich, Wasatch Integrated  
Brad Johnson, DEQ, DERR  
Kirk Treece, Republic Service/Allied Waste  
Craig Siolotti, DEQ  
Roy Baran, DEQ, DERR  
Mark Bleazard, Legislative Fiscal Analyst  
John Ioannou, SLC Landfill  
Issa Hamud, City of Logan  
Representative Jim Gowans

Participating Via Conference Call

Phil Retallick, Clean Harbors  
Senator Kevin Van Tassel  
Doug Jones, Nucor Steel  
Fred Nelson, Attorney General's Office

Discussion at the May 28, 2009 meeting focused on options that could be considered to deal with shortfalls. Today's meeting will focus on options to solve the problem.

- EQRA Immediate Need for FY 10 (July 1-2009 to June 30, 2010)
  - Will need to address the \$2.3 Million shortfall projected to occur
  - As a result, DEQ will be submitting a General Fund supplemental appropriation request as part of the budget process.
  - Strategy:

- One constraint – there is a 25% limitation that DEQ can ask for. Therefore, we are looking into revenue sources. Each fiscal year we close out our books and determine what carryover monies we have. Also, we have instituted a hiring freeze and all those savings will be there. Our goal is to get the request in the range of \$750,000 which would come after the \$400,000 is put into the general fund – based on whatever amount was collected for the last fiscal year.
  - Comment: Duane Woolley: Can you ask for the million plus the \$400,000? Bill indicated that the statute states that the Legislature may not appropriate money from the General Fund to the Department as a supplemental appropriation to cover the costs of the radiation control program and the solid and hazardous waste program in an amount exceeding 25% of the amount of waste disposal fees collected during the most recent prior fiscal year. He also stated that we would look at the balance of the year-end monies of 09 FY and then ask for 25% of that.
- Options for Stabilizing EQRA into the future – (FY11 and beyond)
  - What moneys are required to come out of the EQRA?
  - What are the appropriate uses and what are not?
- Statute 19-01-108 (3): In each fy, the first \$400,000 collected from all waste disposal fees listed in the subsection (2), collectively, shall be deposited in the General Fund as free revenue. The balance shall be deposited in the restricted account created in this section.
  - Should this be continued?
- Comment – Phil Retalick: DEQ should not be providing a royalty to the Legislature to use how it sees fit. It should roll back to DEQ.

#### History of the EQRA Fund:

- When the fund was established, the idea was that the fund would be such that the fees would come in with an understanding that the fees are cyclic in nature. They would cover expenses and in good times, the account would build up to cover leaner years. When the fund was started there was \$500,000 in it. In 2001-2002 there was a reduction of this amount.
- Statute 19-01-108 (5) In order to stabilize the 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.
- Money taken out of the account:
  - High level nuclear waste (FY-93-98) (\$2,239,000)
  - General Fund (FY09 and FY03) (\$737,000)
  - Air Quality (FY08) (\$500,000)
  - Water Quality (FY 08) (\$66,500)
    - TOTAL: \$3,542,500

Bill asked the group if they wanted to leave the \$400,000 in the statute or take it out. He referred to 19-01-108 (4)(c): The Legislature may annually appropriate monies from the Environmental Quality Restricted Account to: The Hazardous Substances Mitigation Fund, up to \$400,000 for purposes set forth in Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act. Consensus was they would discuss it later.

What the money has been used for:

- Total contribution to the fund to date is \$3.2 million
- Brad explained that when federal superfund money is used to clean up a superfund site, the State is required to pay 10% cost share for that project. At three sites (Eureka Mills Cleanup, Operation and Maintenance, Intermountain Waste Oil, and Bountiful/Woods Cross CE Plume) we have committed to pay cost shares. See Attachment #2. Table in the middle indicates four sites where work is going on and at some point we will enter a contract with the federal government to pay costs shares but we have not entered the contract yet. At the bottom of the page there is summary where we are projecting to spend nearly \$7 million, but we are short \$2 million based on what we know now.
- On 3 different occasions DEQ approached the Legislature for supplementals
- DEQ has done projections on when the mitigation fund will go negative. We are negotiating to pay it out over time. We have asked for 10 years, but they don't want to go over 5. When a cost share comes due, we pay 10% of what it was during the construction season. It will be 3+ years before the fund will go negative. There has been discussion regarding stimulus money to fund some of these projects but not to pay for cost shares. As stimulus money is dedicated for these projects we may be able to extend out payments to EPA.
- Statute says that the Legislature MAY annually appropriate not more than \$200,000 from this account to the Department of Public Safety to be used by that department solely for hazardous materials management training and response preparation and emergency response training. This entire part of the statute would need to be annotated to exclude the possibility.
- Statute says that the legislature MAY annually, appropriate up to \$400,000 from the EQRA to the Hazardous Substances Mitigation Fund to be used as match for superfund cleanup. If the "MAY" was eliminated, there would be no chance for a match, which would require DEQ to have to ask the Legislature every time money is needed.
- 19-01-108 (5) In order to stabilize the 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. There has been a history of monies being taken out of this account. Debate is if the money is taken out appropriately or not. Money was taken out for HLNW from FY93-FY 98. It was stopped in FY98 when concern was expressed that this should come out of general funds, not the EQRA. Other times general fund revenues were taken out:

- 1999 - \$437,000 – State was looking for additional sources for budget. They changed the code in the language to allow that money to be taken out. Wording has been changed back. Then \$200,000 was taken out for the same reason in FY2003 (Total \$737,000)
- In FY08 \$566,500 was taken out for Air Quality and Water quality as one-time requests. DEQ had asked for general fund appropriation for these and the Legislative Appropriation Sub Committee determined it would take it out of the EQRA.
- How do we prevent this in the future. Over the years it has been used 9 times.
- Public Safety has not asked for money yet, but potentially could.
- Comment – Phil Retallic: Prefer that the money be kept in the DEQ account to run its program.
- Comment: Dave Bird: How do you arrive at the amount that goes into the EDO budget?
  - Craig Silotti stated that he did not know how it was originally determined. Normally, the only increases the EDO received were the compensation increases. When the Legislature determines that employees get compensation, a percentage of increases are determined between all the funding sources in the Department.
  - \$100,000 was removed from the monies allocated to EDO in General Fund monies and replaced with EQRA monies by the Appropriation Subcommittee.
  - DEQ received an increase in 2003 where the Legislature did an audit on the waste program. They recommended an internal auditor be hired and a records person.
- As we move forward, we need to look at the statute language for EQRA to adjust it to deal with making it clear what should remain in, take out, how the money is being spent, etc., so we can feel comfortable the money is being spent appropriately. This will be the discussion for the next meeting.
- Comment: Nathan Rich – stated that most people are satisfied with the level of service we DEQ provides, and he personally has no objection to paying a fee. If these are fees to provide services to the State; maybe we should call it a tax.
- Comment: Dave B: Understands why it happens in the Legislature, but when we allow the Legislature to transfer money, we are moving away from the idea of fees and a stabilized fund.
- Comment: Phil Retallic: Stated that this discussion would not be taking place if the amount that had gone into the account was still in the account.
- Need to make sure DEQ is funded to provide the services needed. Either the money has to come from General Funds, or DEQ will need to be given freedom to collect fees to support program.

#### Options

- At last meeting there was discussion about moving ahead in FY11 to stabilize the fund. Three options were provided.

- Maintain current Fee Structure and Annual General Fund supplemental Appropriation.
  - From DEQ perspective this is concerning in terms of the ability to successfully get a supplemental appropriation. We are the low man on the totem pole and are not given priority in the funding scheme.
  - DEQ can only ask for 25% in terms of how much of a general fund appropriation it can receive. This is not a viable option from our perspective.
  
- Option #2: Increase Current Fee Structure Rates (Attachment 3)
  - A lot of major fees have not increased in many years. The \$1.9 million represents the \$400,000 that did not have to come out of the general fund. The \$2.3 million would not include money coming out for public safety.
  - Comment – were the fees changed about 4 years ago?
    - This is when the fees were changed for a base category and there was a break to allow a \$14.00 charge, but that was only for treated waste.
    - The base hazardous waste fee of \$28 per ton hasn't changed since 1993 other than a break that was given to treated waste.
    - In 2004 and 2005 the Hazardous Waste Task Force to put into effect some taxes on certain waste, including radioactive waste.
    - There was another effort in 2006 when we looked at SHW fee providers (commercial and municipal), and the municipal fees were made equivalent to be \$13 per ton to make them even.
  
- Comment: Nathan Rich: Why was the tiered structure implemented? He proposed that it be cents per tons.
  - Dennis Downs: in the tiered structure, if a company is just above or below the cutoff, they pay a significant more amount of money.
  
- Comment: Duane Woolley: His facility has an annual facility fee and SHW fees. On the new proposal fee his fees would double if they go out of the tier. He would support getting rid of the tier system, but it would be a 90% increase.
  
- Comment: Phil: Recognized that DEQ needs to be funded. He indicated he would lobby for fee increases. If we are talking about fee increases, it would make us non-competitive with other commercial facilities, particularly in Idaho and Ohio. This would be a deal-stopper for the larger mediation jobs they are bidding on. As this is proposed now, he indicated he could not vote in favor of it. Bill asked to hear back from him as to what he thinks would be appropriate.

- ACTION: Phill offered to provide some examples of fee structures in other states to give DEQ an idea of what they are paying. He would also like to check the volume estimates that DEQ has against some of his real time data that they have gathered this year.
- ACTION: Bill asked Dan Shrum of Energy Solutions to also provide a projection on the volume they have and some numbers

Other Comments:

- Phil Retailic: Based on the fact that funds are being allocated by other funds which generated this shortfall, he asked if DEQ could show the funds as restricted funds and then compare to budget needs (assuming we get the appropriation for other years) what would the potential fee increases be?
- Can a model be built that would not allow anyone to take money from this fund. What would need to be done to change the fee schedule to allow this?
  - Craig Silotti stated that for FY10 we know what our appropriations are that were funded by the Legislature. He estimated what the revenue would be for FY10 to get to the \$2.3 million. \$1.9 is the difference by taking out the \$400,000 which would have to be a statutory change.
- Bill stated that the scenario could be run again with the \$2.3 Million and \$1.9 Million, but we could use volume of waste that the facilities are projecting for future years and see how the numbers come out. Representative Gowans asked if that had ever been projected. Craig responded saying if there were no changes and everything stayed the same as it is now we would be short \$2 Million and we would be looking at staff reductions.
  - Option #3 – Develop a Flat Fee Structure
    - Craig stated that this has been looked at. It got complicated based on the different facilities that pay into it. To have any type of flat fee you get into a tiered structure, so this option was not considered.
    - Comment: Dave Bird: asked about putting a cap on the fund and making it less attractive in the future. In order to make sure the Legislature doesn't take money from DEQ there needs to be a Trust Fund. Anything that provides more money that is needed makes the account vulnerable. On the other hand, it would be good to have an understanding to let them know that the account would go up and down by its very nature, and the money needs to be left alone.
    - Comment: Nathan Rich: The wild card is revenue from commercial facilities bringing in waste and radioactive waste has gone from .25 million cubic feet to 4 m this year.
    - Other areas where we should charge fees? Bill indicated that there is only one venue – assess a fee on generators which we have not done. Stakeholders felt this should be looked at.

- Other Considerations:
  - Charge hourly fees for license review for DRC (levels the playing field for HW/RW)
  - For one-time bailout, utilize monies within the Radioactive Waste Perpetual Care Fund (with payback provisions) – must be statutory change
  - Reduce DEQ staff positions tied to EQRA
  
- Where do we go from here:
  - Timeframe for deliberations:
    - July 2009 – Stakeholder meeting to develop consensus on path forward
    - August/Sept 2009 – develop strategy for path forward (including potential legislation)

#### Next Meeting

- July 30, 2009 at 2:30pm, Room 101, DEQ Building #2
- Bill will look at potential legislative language to be reviewed at this meeting