Environmental Tools:

Qualifying Environmental Trusts

What are Qualifying Environmental Trusts?

Financial assurance rules and programs are increasingly playing a larger role within environmental governance frameworks. Typically, financial assurance mechanisms are designed by government to require industries with large environmental footprints, in particular mining operations, to demonstrate adequate financial resources to appropriately meet reclamation needs. Qualifying Environmental Trusts (QET) are one of several mechanisms to demonstrate, secure and assure appropriate finances are available for the reclamation of a site when operations cease. Specifically, a QET is an agreement between a trust company and a project proponent, where a specified amount of money (as defined by government) is set aside in an interest earning trust, for the sole purpose of funding the reclamation of a site.

For a QET to qualify, there must be a law that requires maintenance of the trust, and the trust must be established for the sole purpose of funding the reclamation of a specific site. The trustee must be a government body, agency or a licensed trust company. The trust is limited in the investments it enters into and the trust may not conduct activities other than those described for the qualifying environmental trust.

Where are they used?

QETs are currently not widely used in Canada as a tool to secure funds for reclamation, although several Canadian mining companies established a QET to assure financial resources for site reclamation.

The Gibraltar Mine Re-start, British Columbia

The Gibraltar Mine established in the 1970s, is a low-grade porphyry copper molybdenum mine located in Williams Lake, British Columbia. Taseko Mines Limited purchased the mine in 1999 from Boliden Limited. During this takeover the mine did not remain in operation. In December 2003, the BC Government and Taseko established a trust agreement that created a partnership amongst a group of investors that funded a QET for Gibraltar's reclamation liabilities. In exchange, the investors receive royalty payments from the mine and a residual interest in the trust. The newly established QET, replaced existing 16.6 million reclamation security held by government. Taseko used the cash reclamation security released by the government to fund the restart of the mine in October 2004.

Tool Performance:

Pros

- In appropriate circumstances, QETs can provide a cost-effective means to secure funding for site reclamation.
- Places the financial costs of reclamation upon the project owner and operator versus government and taxpayers.
- QETs can be structured to allow regular annual contributions to be made that reflect the environmental liabilities of an operation over its lifetime.

- Can be designed to allow for progressive reimbursement payments to the proponent as reclamation work is conducted, thus minimizing the security obligation at the time of closure.
- It manages the risk of reclamation programs by evaluating the financial capacity of the site owner to do future reclamation.
- A QET can provide two related tax advantages to companies relative to other forms of financial reclamation security:
    1. They provide an immediate opportunity to deduct future reclamation costs at a time when revenue is high and favourable tax treatment is most advantageous.
    2. They provide specific exemption from requiring the reduction in resource profits by the amount contributed to a QET.

Cons

- May not be the most cost-effective means to secure reclamation funds, especially for single-mine companies, as QETs can impose significant additional costs and divert resources from the core business of a firm.
- May have higher administrative costs than alternative securities such as Letter of Credit.
- Proponents within industry often view QETs as being disadvantageous or unfair approach to secure finances for site reclamation, as the federal tax advantage provided by allowing a tax deduction for contributions to a QET is negated by a requirement that annual fund earnings be subject to taxation when returned to the corporation.

Special Considerations:

Under the *Canada Income Tax Act*, QETs are structured to be revenue neutral from a federal perspective. Under the Act, contributions made to a QET are tax deductible for the year in which they are made, however trust income and trust disbursements are taxable when funds are returned to the company, with disbursements being conceptually equal to deductible reclamation expenditures.