#### State of Oregon

Department of Environmental Quality Memorandum

**Date:** March 25, 2009

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

**Subject:** Agenda Item D, Temporary Rule Adoption: Amend the Clean Water State Revolving Fund Rules, OAR Chapter 340, Division 54

April 17, 2009 EQC Meeting

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| **Why this is Important** | In February, the U.S. Congress passed the American Recovery and Reinvestment Act of 2009. The act provides $4 billion of stimulus funding to states through the Clean Water State Revolving Fund loan program. A temporary rulemaking is needed to amend specific requirements within Oregon's Clean Water State Revolving Fund loan program to ensure the effective and timely implementation of the act’s requirements. |
| **Department Recommendation and EQC Motion** | The Department of Environmental Quality recommends that the Oregon Environmental Quality Commission adopt the proposed temporary rule revisions to OAR Chapter 340, Division 54, as presented in Attachment A. |
| **Background and Need for Rulemaking** | DEQ administers Oregon’s Clean Water State Revolving Fund loan program through support of an annual capitalization grant from the U.S. Environmental Protection Agency. Oregon’s regular annual capitalization grant is about $10 million and, through the act, DEQ will be awarded an additional capitalization grant of about $44 million.  DEQ’s current administrative rules do not allow for additional subsidizations required by the act. Without the proposed rule amendments, DEQ is not eligible to receive act funds.  DEQ recognizes the act’s goal of expeditiously funding eligible projects that will preserve and create jobs and promote economic recovery. DEQ convened a financial work group to address this goal and the group provided recommendations for this rulemaking. DEQ also has worked closely with EPA to ensure this rulemaking complies with requirements of the act. The proposed rule revisions address the act’s goal by defining what projects are eligible, how funds under the act are to be allocated to projects and what financial terms will be established. |
| **Effect of Rule** | The temporary rulemaking will establish rules in OAR 340-054-0098 through OAR 340-054-0108 (Attachment A). These rules will govern the use of funds provided by the act within the Clean Water State Revolving Fund loan program and will define the use of the funds, the types of eligible projects and activities, the allocation of the funds and specific financial terms.  In addition to proposing to adopt OAR 340-054 0098 through OAR 340-054-0108, DEQ made minor edits to OAR 340-054-0024, 0025 and 0035 to clarify the terminology used for design or construction loans. The language in OAR 340-054-0025 was modified to ensure that DEQ can update its Clean Water State Revolving Fund Intended Use Plan when necessary. |
| **Commission Authority** | The EQC has authority to take this action under Oregon Revised Statutes 468.020 and 468.423 - 468.440. |
| **Stakeholder Involvement** | DEQ worked closely with current applicants and various organizations including the Oregon Association of Clean Water Agencies, the League of Oregon Cities, Oregon Water Resources Congress, Association of Oregon Counties, Special Districts Association of Oregon and the Oregon Association of Conservation Districts. DEQ notified Oregon communities and public agencies about the availability of funds through the act in December, 2008, through both postal and electronic mail, and met with current applicants in December to provide information on potential federal stimulus funding. DEQ held a follow-up meeting on March 5 to provide updated information and answer questions. A financial work group was also convened to discuss options for providing subsidization as required by the act. |
| **Public Comment** | Public comment is not required for a temporary rulemaking and did not occur for this rulemaking. It was necessary for DEQ to proceed with temporary rulemaking without public comment to make sure Oregon would be eligible for the additional capitalization grant. DEQ will collect public comments as part of the permanent rulemaking scheduled to follow this temporary rulemaking. |
| **Key Issues** | The act requires funded projects to be under contract or under construction by February 16, 2010. Wastewater improvement projects typically take more than a year to plan, design, secure contracts and begin construction. Because DEQ anticipates receiving the capitalization grant by early June, we are encouraging applicants to complete all loan application requirements now.  The act also requires at least 50 percent of the capitalization grant to be used for additional subsidization. The intent of the act is to produce the greatest economic stimulus while targeting communities otherwise not able to afford necessary water quality infrastructure improvements. Providing principal forgiveness on loans is one subsidization option allowed by Oregon law.  Data indicates the cost per capita for addressing wastewater infrastructure needs is consistently higher for small communities. DEQ determined it could best meet the intent of the act, including the subsidization requirement, by offering loans with 75 percent principal forgiveness and a zero percent interest rate to small communities of less than 5,000 people. In an effort to provide reasonably sized loans to as many communities as possible, a $5 million limit is set for each loan.  The act identifies October 1, 2008, as the eligibility date for projects, rather than February 17, 2009, the date the act was signed. Loans made before October 1, 2008 are not eligible for funding under the act. DEQ made this determination based on discussions with the Oregon Economic and Community Development Department, the agency implementing the drinking water state revolving fund program, and other states. |
| **Next Steps** | If adopted at the April 17, 2009, commission meeting, these temporary rules will be filed with the Secretary of State’s Office and Legislative Council in late April. DEQ will publish and accept public comment on its Clean Water State Revolving Fund Intended Use Plan that will outline how the act’s funds will be used. After the public comment period, EPA will process DEQ’s capitalization grant application and it funds should be available for loans by June. Permanent rulemaking will begin in April. |
| **Attachments** | 1. Redlined Version of Proposed Rule Revisions 2. Statement of Need and Justification |
| **Available Upon Request** | 1. DEQ’s Implementation Plan of the 2009 American Recovery and Reinvestment Act 2. EPA Guidance documenton awarding capitalization grants under the Act |

Approved:

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