
Date: August 5, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda Item P, Temporary Rule Adoption: Amend the Clean Water State Revolving Fund Rules, OAR Chapter 340, Division 54
August 20-21, 2009 EQC Meeting

Why this is Important In February, the U.S. Congress passed the American Recovery and Reinvestment Act of 2009. The act provided about \$44.3 million in stimulus funding to Oregon's Clean Water State Revolving Fund loan program. DEQ solicited projects for the stimulus funding and received 160 applications. To ensure effective and timely implementation of requirements under the act, DEQ expedited the allocation of the funding to 13 applicants. Consequently, several priority projects did not receive funding. DEQ wants to supplement the stimulus funding by making a portion of the state fiscal year 2010 program funds available for these projects. To accomplish this, a temporary rulemaking is needed to allow the use of state fiscal year 2010 program funds for new priority projects.

DEQ Recommendation The Department of Environmental Quality recommends that EQC adopt the proposed temporary rule revisions to OAR Chapter 340, Division 54, as presented in Attachment A and the findings in Attachment B.

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 and from loan repayments through the program's general fund. DEQ recognized the objective of ARRA to expeditiously fund eligible projects during the current nationwide recession and allocated stimulus funding on July 10, 2009, when EPA approved DEQ's Intended Use Plan. Due to DEQ's expedited process for allocating stimulus funding and the amount of funding available, several priority projects were not funded.

The proposed rule revisions will allow DEQ to set aside a portion of the state fiscal year 2010 funds available under the CWSRF program fund for a special reserve. This reserve will provide funding for new projects that have completed all CWSRF loan application requirements and also provide a financial incentive during the economic downturn. The current rules direct DEQ to provide

increases to existing loans before funding new projects. Typically, funds available during a fiscal year are adequate to fund only a few new projects as there is a continual demand for loan increases to existing projects.

DEQ proposes the creation of a special reserve only for the current state fiscal year, July 1, 2009 to June 30, 2010. To ensure the program's financial integrity, DEQ proposes to set aside 50 percent of the program funds, excluding EPA capitalization grants, for the 2010 special reserve. The amount of program funds available is about \$48.5 million. Therefore, \$24.25 million would be moved to the 2010 special reserve. The reserve will address the CWSRF program short-term goals by continuing to provide financial assistance to communities and making the program more accessible to a wider range of water quality improvement projects.

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| Effect of Rule | The temporary rulemaking will establish rules in OAR 340-054-0110 through OAR 340-054-0118 (Attachment A). These rules will govern the use of funds under a special reserve with the Clean Water State Revolving Fund loan program for the current state fiscal year 2010, and will define the use of the special reserve, allocation of funds, financial terms, and the Intended Use Plan. |
| Commission Authority | The EQC has authority to take this action under Oregon Revised Statutes 468.020 and 468.423 – 468.440. |
| Stakeholder Involvement | Beginning in December 2008, DEQ has worked closely with project 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 to provide information on stimulus funding. |
| 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 ensure timely use of the program funds available for state fiscal year 2010. |
| Key Issues | DEQ received 160 application requests, totaling about \$718 million, for stimulus funding under the American Recovery and Reinvestment Act of 2009. From the \$44.3 million received under ARRA, DEQ was able to only fund 13 applicants based on the amount of funding allowed in the program rules that could be allocated to an eligible applicant. There are currently 13 additional priority projects that did not receive stimulus funding due to the need to expedite the allocation of the act funds. |

DEQ reviewed the financial status of the CWSRF program for state fiscal year 2010 and determined there is about \$48.5 million available under the program fund, excluding EPA capitalization grants. To provide economic stimulus for communities that may not be able to afford necessary water quality infrastructure improvements, DEQ determined that providing a financial incentive of zero percent interest would not impact the financial integrity of the program. In an effort to provide new loans to several communities, a \$5 million limit is set for each borrower. The reserve will not be used to provide loan increases.

The \$44.3 million capitalization grant DEQ received under the Act will provide about \$19.25 million in additional loan repayments to the CWSRF program fund. This additional funding will in turn be available for loan increases to existing projects or funding of new projects.

Offering about \$24.25 million in loans at zero percent interest from the 2010 program fund would result in about \$8.6 million less in loan repayments to the fund over a 20-year period based on the current interest rate of 3.07%. Therefore the loan repayments under the Act funding would make up the loss in interest payment for the 2010 special reserve.

Next Steps

If adopted at the August 20 – 21, 2009 commission meeting, these temporary rules will be filed with the Secretary of State’s Office and Legislative Council in late August. DEQ will publish and accept public comment on its Clean Water State Revolving Fund Intended Use Plan that will outline how the 2010 special reserve and general fund will be used. After the public comment period, DEQ will address any comments and the funds will then be available for new loans.

Attachments

- A. Redlined Version of Proposed Rule Revisions
- B. Statement of Need and Justification

Approved:

Section: _____

Division: _____

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DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

Funding under the State Fiscal Year 2010 Special Reserve

340-054-0110

Purpose and Applicability

- (1) OAR 340-054-0110 through OAR 340-054-0118 govern the use of funds under a special reserve through the Clean Water State Revolving Fund (CWSRF) program for the state fiscal year 2010 (July 1, 2009 to June 30, 2010).
- (2) All requirements for projects funded under the special reserve not specifically addressed in OAR 340-054-0110 through OAR 340-054-0118 are subject to OAR 340-054-0001 through OAR 340-054-0065.

Stat. Auth.: ORS 468.020, ORS 468.440

Stat. Implemented: ORS 468.423 to 468.440

340-054-0112

Use of the Special Reserve

- (1) The department will establish a special reserve for the state fiscal year 2010 in an amount equal to 50 percent of the total funds available for the state fiscal year 2010, excluding any fiscal year 2010 capitalization grant. This reserve is in addition to the reserves established under OAR 340-054-0025(6), except as provided in section (5) of this rule.
- (2) Funds available under the special reserve may not be used for planning loans.
- (3) Loans made from the special reserve will only be used for new projects included in the state fiscal year 2010 Intended Use Plan.
- (4) Notwithstanding OAR 340-054-0025(6)(c), funds from the special reserve will not be used for increases to existing CWSRF loans.
- (5) During the time that OAR 340-054-0110 through OAR 340-054-0118 is effective, the expedited reserve established under OAR 340-054-0025(6)(c)(A) in the amount of \$2 million will be moved to the CWSRF general fund.

340-054-0114
Allocation of Funds

- (1) The department will determine the amount of funding to be provided to an applicant, but the loan amount allocated to any one borrower under the special reserve may not exceed \$5 million.
- (2) A borrower who receives funding under the special reserve may also receive funding from the CWSRF general fund, subject to the requirement of OAR 340-054-0025(6)(a), or from the CWSRF Small Communities reserve established under OAR 340-054-0025(6)(c)(B).

Stat. Auth.: ORS 468.020, ORS 468.440
Stat. Implemented: ORS 468.423 to 468.440

340-054-0116
Financial Terms

Notwithstanding OAR 340-054-0065(5), the interest rate on a loan funded from the special reserve will be zero percent, regardless of the term of repayment.

Stat. Auth.: ORS 468.020, ORS 468.440
Stat. Implemented: ORS 468.423 to 468.440

340-054-0118
Intended Use Plan

Notwithstanding OAR 340-054-0025(5)(d), the department will provide at least 14 days for public comment on the proposed Intended Use Plan.

Stat. Auth.: ORS 468.020, ORS 468.440
Stat. Implemented: ORS 468.423 to 468.440

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Environmental Quality, Water Quality Division

Agency and Division

OAR Chapter 340

Administrative Rules Chapter Number

Rule Caption: Amend the Clean Water State Revolving Fund Rules

In the Matter of: Clean Water State Revolving Fund program, Chapter 340, Division 54

Statutory Authority: ORS 468.020, ORS 468.440

Other Authority: Not applicable

Statutes Implemented: ORS 468.423 to 468.440

Need for the Temporary Rule(s):

DEQ received 160 application requests for stimulus funding under the American Recovery and Reinvestment Act of 2009. The application requests for funding of water quality improvement projects totaled about \$718 million. DEQ was able to only fund 13 of those applicants. The federal capitalization grant provided by the act will result in an additional \$19 million in loan repayments to DEQ's Clean Water State Revolving Fund. At the same time, several priority projects currently remain unfunded.

The proposed rule revisions will allow DEQ to set aside a portion of the state fiscal year 2010 funds available under the CWSRF program fund for a special reserve. This reserve will provide funding for new projects and also provide a financial incentive during the economic downturn. The current rules direct DEQ to provide increases to existing loans first. Typically, funds available during a fiscal year are adequate to fund only a few new projects as there is a continual demand for loan increases to existing projects. The proposed rules will ensure funding from the proposed special reserve is also available to new projects, rather than exclusively funding increases to existing projects.

A temporary rule is necessary to allow DEQ to use this proposed funding immediately for new projects in state fiscal year 2010.

Documents Relied Upon:

The following documents are available from the DEQ Water Quality Division, 811 SW Sixth Avenue, Portland Oregon. To make arrangements to review these documents call (503) 229-6412. These documents are also available online at <http://www.deq.state.or.us/wq/loans/loans.htm>

- Oregon Administrative Rules, Chapter 340, Division 54
- Amended Final Intended Use Plan - Update #3 State Fiscal Year 2009 and Final Intended Use Plan – State Fiscal Year 2010 (PDF)

Justification of Temporary Rule(s):

The Commission finds that failure to adopt the temporary rule will result in serious prejudice to the public interest because it will have the following consequences:

To ensure effective and timely implementation of requirements under the act, DEQ expedited the allocation of funding, which resulted in several priority projects not being funded. DEQ reviewed the financial status of the CWSRF program for state fiscal year 2010 and determined there is about \$48.5 million available under the program fund, excluding EPA capitalization grants. To provide economic stimulus for communities that may not be able to afford necessary water quality infrastructure improvements, DEQ determined that providing a financial incentive of zero percent interest for one half of the state fiscal year 2010 funds would not impact the financial integrity of the program and would substantially serve the public interest. A temporary rulemaking is needed to fund new priority projects and modify the financial terms for the special reserve fund.

Housing Cost Impacts:

DEQ has determined that this proposed rulemaking will have no measurable impact on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.

*Dick Pedersen, Director
(On Behalf of the Commission)*

Date Signed