#### State of Oregon

Department of Environmental Quality Memorandum

**Date:** August 5, 2009

**To:** Environmental Quality Commission

**From:** Dick Pedersen, Director

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

August 20-21, 2009 EQC Meeting

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| **Why this is Important** | In February, the U.S. Congress passed the American Recovery and Reinvestment Act (ARRA) 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 allocated all the funding to 13 applicants in an expedited manner. 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 first from the appropriate funding category as established in the rules. Typically, funds available during a fiscal year are only adequate to fund a few new projects as there is a continual demand for loan increases to existing projects.  The use of the Special Reserve is proposed to exist 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 fifty percent of the program funds, excluding EPA capitalization grants, for the 2010 Special Reserve. The amount of the program fund 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. |
| **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** | Redlined Version of Proposed Rule Revisions  Statement of Need and Justification |

Approved:

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Division: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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