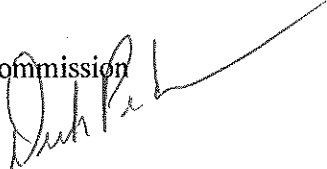


State of Oregon  
Department of Environmental Quality

Memorandum

**Date:** September 29, 2009  
**To:** Environmental Quality Commission  
**From:** Dick Pedersen, Director   
**Subject:** Agenda Item H, Rule Adoption: Amend the Clean Water State Revolving Fund, OAR Chapter 340, Division 54  
October 22-23, 2009 EQC Meeting

**Why this is Important** DEQ is implementing the American Recovery and Reinvestment Act of 2009 through its Clean Water State Revolving Fund loan program under temporary administrative rules. The temporary rules are effective for 180 days and will expire October 28, 2009. To ensure DEQ's program is able to continue to meet the requirements and administer the funds under the Act, a permanent rulemaking is necessary.

**DEQ Recommendation and EQC Motion** The Department of Environmental Quality recommends that EQC adopt the proposed permanent 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 with support of an annual capitalization grant, generally about \$10 million, from the U.S. Environmental Protection Agency and from loan repayments. These repayments are from past years' loans and go into the program for future loans. Additionally, while the American Recovery and Reinvestment Act of 2009 allocated about \$44 million to DEQ's state revolving fund program in February 2009, DEQ's administrative rules at that time did not allow for the additional subsidization required by the Act.

EQC adopted temporary administrative rules in April 2009 that addressed the Act's additional requirements. The temporary rules define project eligibility, the use and allocation of funds and financial terms for loans. The temporary rules expire October 28, 2009 and it is necessary to establish permanent rules that will ensure DEQ complies with the Act's requirements.

The proposed permanent rules include minor refinements to the temporary rules:

- The September 1, 2009 date in the temporary rules was deleted in the proposed rules as DEQ committed all Act funds prior to that date;
- the rules clarify that if there are remaining funds, the funds will be offered to an eligible applicant on the project priority list in rank order;
- the proposed language maintains a \$5 million limit on the amount of a loan to an applicant, and clarifies that DEQ has the authority to determine the amount of funding provided to an applicant within that limit; and

- the proposed rules clarify that an applicant has to complete all Clean Water State Revolving Fund requirements for a project to be eligible for a loan.

**Effect of Rule** The proposal will establish rules in OAR 340-054-0098 through OAR 340-054-0108 (see page 9, attachment A). These rules will govern the use of Act funds when those funds are utilized 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 more frequently 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 applicants and various organizations in early 2009, 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 when the temporary rules were developed to address ARRA requirements.

DEQ did not convene a stakeholder advisory committee during the development of the proposed rules since only minor clarifications were made to the temporary rules. DEQ did provide a notice of the proposed permanent rules by U.S. mail to cities, counties and special services districts, and to the Oregon Association of Clean Water Agencies, Oregon Water Resources Congress and Oregon Association of Conservation Districts by email.

**Public Comment** DEQ provided a public comment period from July 23 to Aug. 24, 2009 and held public hearings in Medford, Bend and Portland. Results of the public hearings are provided in attachment C.

**Key Issues** The permanent rulemaking process included the opportunity for the public to comment on the proposed rule revisions. The temporary rules passed in April 2009 were recommended with the intent that DEQ would follow-up with a permanent rulemaking, and many of the key issues from the temporary rules are relevant for this proposed permanent rulemaking. These issues included the Act's requirements that additional subsidization of at least 50 percent must be provided to eligible applicants, and that loans made prior to October 1, 2008 are not eligible

for funding. DEQ would not be able to continue to implement the Act's requirements without permanent rules.

**Next Steps** If adopted, these permanent rules will be filed with the office of the Secretary of State's office before October 28, 2009. These rules will update the current temporary administrative rules, and will become effective upon filing. DEQ will use the rules to administer the Clean Water State Revolving Fund loan program and implement Act requirements.

**Attachments**

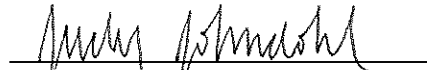
- A. Redline version of the proposed rule revisions
- B. Summary of public comments and DEQ's responses
- C. Presiding officer's report on public hearings
- D. Relationship to federal requirements questions
- E. Statement of need and fiscal and economic impact
- F. Land use evaluation statement

**Available Upon Request**

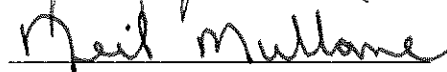
- 1. Legal notice of hearing
- 2. Cover memorandum from public notice
- 3. Rule implementation plan

Approved:

Section:



Division:



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