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**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.

<b>Effect of Rule</b>	<p>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.</p> <p>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.</p>
<b>Commission Authority</b>	<p>The EQC has authority to take this action under Oregon Revised Statutes 468.020 and 468.423 - 468.440.</p>
<b>Stakeholder Involvement</b>	<p>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.</p> <p>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.</p>
<b>Public Comment</b>	<p>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.</p>
<b>Key Issues</b>	<p>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</p>

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: \_\_\_\_\_

Report Prepared By: Larry McAllister  
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## DEPARTMENT OF ENVIRONMENTAL QUALITY

### DIVISION 54

#### CLEAN WATER STATE REVOLVING FUND PROGRAM

##### 340-054-0024

##### Design Loans and Construction Loans

The Department will administer design loans or construction loans to address point source or nonpoint source pollution. Applications may be submitted in response to the Department's annual solicitation or at anytime during the program year. The Department may require different application forms for point source projects and nonpoint source projects.

(1) General Requirements and Provisions. Applicants applying for CWSRF financing for design loans or construction loans must submit:

- (a) A fully executed and complete application on a form provided by the Department;
- (b) A completed Checklist of Exhibits and Requirements and associated documents;
- (c) Evidence that the Applicant has the authority to undertake the project;
- (d) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion);
- (e) All pertinent requirements listed in OAR 340-054-0035; and
- (f) Any other information requested by the Department.

(2) Design Loans and-or Construction Loans. The Department will administer loans for activities that result in the design or construction of sewage facilities, nonpoint source control or estuary management projects. When approved by the Department, security measures intended to prevent intrusion or damage to such facilities or projects, or interruption of a facility or project's processes are eligible design or construction costs. Design loans and-or construction loans have the following terms and conditions:

- (a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);

(b) If not implementing a sponsorship option, the interest rate and corresponding loan terms for design ~~and~~or construction loans must be in accordance with OAR 340-054-0065(5)(f), or OAR 340-054-0065(5)(g).

(c) The loan repayment period (as defined in the loan agreement) must begin on the outstanding principal and interest balance in accordance with OAR 340-054-0065(9); and

(d) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).

(3) Sponsorship Option for protection or restoration of water resources.

(a) A public agency (sponsoring community) may apply to the Department for a CWSRF loan to finance a sewage collection system or sewage treatment facility project combined with a water resource activity. Within this sponsorship option, the CWSRF program may fund both projects under a single CWSRF loan if the Department determines that the water resource activity meets program eligibility, funds are available, and the ranking of the sewage project allows its funding.

(b) The interest rate for the consolidated financing will be reduced whenever possible to a rate resulting in the semi-annual payment for the joint project being equal to the expected semi-annual payment with a traditional CWSRF loan for the sewage collection system or sewage treatment facility project only.

(c) A public agency that participates in this sponsorship option may either implement the water resource activity itself or may enter into a sponsorship agreement with an implementing partner who will implement the water resource activity. The sponsoring community remains responsible, however, for both the successful completion of the water resource activity and for the repayment of the CWSRF loan. The implementing partner will not be responsible for any repayment to the CWSRF program.

(d) All applicants for the sponsorship option must submit:

(A) A completed sponsorship application and project description using a form provided by the Department;

(B) Evidence that the sponsoring community and implementing partner (if an implementing partner is involved) have authority to undertake the water resource activity;

(C) An executed copy of the sponsorship agreement entered into with the implementing partner, if applicable; and

(D) Any other information requested by the Department.

(e) Financial terms of the sponsorship option will be as follows:

(A) The interest rate for the sponsorship option must be in accordance with OAR 340-054-0065(5)(h); and

(B) The requirements of OAR 340-054-0065 will be applicable to the sponsorship option except as specifically modified in this rule.

(f) The Department will determine the total amount of CWSRF funds to be allocated at the reduced interest rate through the sponsorship option in each program year.

Stat. Auth.: ORS 468.423 - ORS 468.440  
Stats. Implemented: ORS 468.429 & ORS 468.439  
Hist.: DEQ 10-2003, f. & cert.ef. 5-27-03

### **340-054-0025**

#### **Application Process; Project Priority List; Intended Use Plan; Allocation of Funds**

The Department will periodically, but not less than annually, develop and submit an Intended Use Plan (IUP) to EPA as described in section 606 of the CWA and 40 CFR § 35.3150. The IUP will describe the proposed uses of the CWSRF and will include a project priority list numerically ranking all eligible applications received. The Department will develop the IUP using the following processes in this rule.

(1) Notice: The Department will notify interested parties at least annually of the opportunity to submit applications. Interested parties include, but are not limited to, watershed councils, counties, soil and water conservation districts, special districts and all of the incorporated cities listed in the current edition of the Oregon Blue Book.

(2) Applications: For a project to be considered for the project priority list, an Applicant must submit a completed application; the application must address an imminent, actual or threatened water quality problem; and the project must be eligible for funding under OAR 340-054-0015.

(3) Timing: In addition to applications received in response to the solicitation for applications indicated in OAR 340-054-0025(1), the Department will accept applications at any time.

(4) Project Priority List Ranking:

(a) The Department will develop a project priority list by ranking all eligible proposed projects using the criteria in **Table 1** of this rule. Projects will be numerically ranked based on the sum of the points awarded each proposed project. A maximum of one hundred (100) points is available for a proposed project.

(b) The Department will update the project priority list and the IUP at least every four months or upon receipt by the Department of five eligible applications, whichever timeframe is shorter. If no eligible applications are received during a four month period, the project priority list will not be updated.

**TABLE 1**

CWSRF Project Ranking Criteria

**Category 1:** Proposed Project's anticipated benefit for water quality or public health

**1A--**(0 or 8 points)--Project addresses water quality or public health issue within a "special status" water body

**1B--**(0-6 points)--Project addresses noncompliance with water quality standards, a public health issue or effluent limits related to surface waters

**1C--**(0-6 points)--Project addresses noncompliance with water quality standards or a public health issue related to groundwater

**1D--**(0-12 points)--Project ensures that a source already in compliance maintains that compliance.

**1E--**(0-8 points)--Project improves or sustains aquatic habitat supporting state or federally threatened or endangered species

**1F--**(0-12 points)--Project incorporates wastewater reuse or a water quality-related conservation process

**1G--**(0-7 points)--Project improves water quality by mitigating any of the following pollutants: temperature, dissolved oxygen, contaminated sediments, toxics on the EPA Priority Pollutants List, bacteria or nutrients

**1H--**(0-5 points)--Project supports the implementation of a Total Maximum Daily Load (TMDL) allocation or action plan for a Ground Water Management Area

**1I--**(0-6 points)--Project addresses a water quality or public health issue involving "Persistent Bioaccumulative Toxics" (PBT's)

**Category 2:** Potential water quality or public health consequences of not funding the proposed project

**2A--**(0-5 points)--If the proposed project is not implemented, water quality standards are likely to be exceeded or existing exceedances are likely to worsen

**2B--**(0-5 points)--If the proposed project is not implemented, the resulting impact is likely to cause a public health problem

**2C--**(0-5 points)--A unique opportunity to implement the proposed project currently exists due to timing, finances or other limitations that would not allow this project to be implemented in the future

**Category 3: Other considerations**

**3A**--(0-3 points)--Project has significant educational or outreach component

**3B**--(0-3 points)--Project demonstrates innovative technology which is transferable

**3C**--(0-3 points)--Project is a partnership with other group(s), incorporating self-help, financial or in-kind support

**3D**--(0-5 points)--Project incorporates monitoring, reporting or adaptive management

**3E**--(0 or 1 point)--Project addresses or includes risk management, safety or security measures

**3F**--(0-minus 5 points)--Applicant's past performance with previous Department loans or grants such as, but not limited to, failure to satisfy match requirements of a grant, failure to complete the project or failure to submit any other required deliverable in a timely manner.

(5) Draft Intended Use Plan, Public Notice and Review:

(a) The Department will update the IUP whenever changes are made to the PPL.

(b) With each update the Department will notify all applicants whose projects are included within the draft IUP of their ranking on the PPL.

(c) The Department will provide notice and an opportunity for the public to comment on proposed changes to the IUP, and will make the draft IUP available to the public.

(d) Except for revisions to the IUP resulting from applications for expedited loans, the Department will provide at least 30 days for public comments on the draft IUP. The Department will provide at least 5 days for comment on changes to the IUP resulting from new applications for expedited loans.

(e) During the comment period, any Applicant may request the Department to reevaluate a project's rank on the proposed project priority list or to make other changes to the IUP.

(f) The Department will consider all comments submitted during the comment period before finalizing the IUP.

(6) Allocation of Funds:

(a) During any Department program year (July 1 through June 30), no Borrower on the project priority list (including either loan increases or new project loans) may be allocated more than the greater of \$2.5 million or 15% of the total available funds as reported in the initial IUP for that program year. If CWSRF moneys are available after allocating this limit to each eligible Applicant, additional funds may be allocated above this limit.



(b) The Department will establish the following funding categories within the CWSRF: Expedited Loan Reserve, Small Community Reserve, Planning Reserve, and general fund. The Department will first allocate annual funds to the three reserves in accordance with the criteria in sections (6)(c)(A), (6)(c)(B) and (6)(c)(C). Funds not allocated to one of the reserves will be allocated to the CWSRF general fund.

(c) The Department will assign projects on the priority list to an appropriate reserve or to the CWSRF general fund. Requests for increases to existing loans will be awarded first. Increases will be awarded from the appropriate reserve or the general fund. Following any allocations for increases, the Department will award loans to projects within each reserve and the general fund for new projects as described in sections (6)(c)(A), (6)(c)(B), (6)(c)(C) and (6)(c)(D)

(A) Expedited Loans Reserve. A reserve of \$2 million will be established to fund expedited loans. The Director may increase the cap on this reserve. Individual urgent repair loans are limited to \$150,000. The maximum amount available for a single emergency loan is \$1.85 million. Emergency loans and urgent repair loans will be awarded in rank order. Unused funds still remaining in the expedited loan reserve on May 31 of the program year can be reallocated to the CWSRF general fund.

(B) Small Community Reserve. A maximum of 15% of the total CWSRF monies will be available in each program year for allocation to small community loans. Local community, design ~~and-or~~ construction projects eligible within this reserve will be awarded loans in rank order.

(i) Each project allocation from this reserve will be for not more than the greater of \$750,000 or 25% of the reserve, until all eligible small community requests have been allocated funds. If reserve funds still remain on March 1st of the program year, these remaining funds may be allocated to any unfunded portions of a small community loan request in the order the loan agreements were executed;

(ii) After reallocating as directed in OAR 340-054-0025(6)(c)(B)(i) above, any funds still remaining in the small community reserve can be moved to the CWSRF general fund.

(C) Planning Loan Reserve. A maximum of \$3 million of the total CWSRF will be available in each program year for allocation to planning loans. Projects will be selected from the project priority list in rank order for this reserve.

(i) Each individual allocation from the planning loan reserve will initially not exceed \$150,000. If reserve funds still remain on March 1st of the program year, these remaining funds may be reallocated to any unfunded portions of planning loan requests in the order the loan agreements were executed;

(ii) After reallocating as directed in OAR 340-054-0025(6)(c)(C)(i) above, any funds still remaining in the planning reserve can be moved to the CWSRF general fund.

(D) General Fund. All new design or construction project loans not funded from a reserve will be allocated from the general fund. Any remaining emergency or urgent repair, small community or planning projects not already allocated funds from their respective reserves, or allocated less than the total loan amount requested, may be awarded funding in rank order subject to available funds and the maximum loan amount for the program year.

(E) Loan Increases. Upon request, the Department may increase the funding for previously financed projects up to the maximum loan amount defined for each borrower in section 6(a) of this rule. These loan increases may be offered by either providing an additional loan at the current interest rate or increasing the amount of the existing loan. Awards for loan increases will be awarded in rank order.

(7) Project Priority List Modification:

(a) The following conditions apply to projects on the project priority list.

(A) Ranked projects may remain on the project priority list for up to 36 months while pursuing funding. After 36 months, the Department will notify the Applicant in writing that the project is being removed from the list.

(B) Applicants whose projects are removed from the project priority list because they have exceeded the 36 month limit may resubmit their projects to the program for ranking and incorporation into the next update of the IUP.

(C) The Department may provide one six-month extension to applicants requesting to remain on the list beyond the 36 month limit. Applicants requesting an extension must submit a progress report indicating the status of their effort in pursuing CWSRF financing and an updated time frame indicating when they expect to have completed all requirements necessary to be awarded funding.

(D) The Department may remove a project from the project priority list upon written notice to the applicant at any time the Department determines that the project does not meet eligibility requirements, the Borrower no longer requires CWSRF financing or the Applicant requests removal.

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.433 & ORS 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

**340-054-0035**

### **Final Stage of Application Process for Design Loans or Construction Loans**

| The Department will administer loans for design and-or construction of both point source and nonpoint source projects.

(1) In addition to the loan application and items specified in OAR 340-054-0024(1), applicants applying for a CWSRF loan for a design or construction project must submit the following documents to be considered for loan approval:

(a) A planning document that the Department determines adequately documents the efficacy and appropriateness of the proposed project to remediate the identified water pollution control problem. For sewage collection systems or sewage treatment facilities, the planning document must meet the requirements of the Department's CWSRF Procedures Manual (February 1, 2008) and other planning guidance in effect at the time of submittal

(b) In accordance with OAR 340-018-0050, a Land Use Compatibility Statement (LUCS) from the appropriate planning jurisdiction demonstrating compliance with the Department of Land Conservation and Development's (DLCDC) acknowledged comprehensive land use plan and statewide land use planning goals.

(c) An environmental review prepared in accordance with the requirements of the EPA approved State Environmental Review Process (SERP) described in the CWSRF Procedures Manual (February 1, 2008).

(d) Any other information requested by the Department.

(2) In addition to the requirements of section (1) of this rule, applicants for a CWSRF loan for the design or construction of sewage collection systems or sewage treatment projects must submit the following documents to be considered for loan approval:

(a) A Department approved sewer use ordinance adopted by all municipalities and service districts serviced by this project that meets the provisions of this section. The sewer use ordinances must prohibit any new connections from inflow sources into the sewage collection system; and require that no wastewater introduced into the sewage collection system contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety or adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

(b) A demonstration that the Applicant has adopted a user charge system that meets the requirements of the User Charge System section of the CWSRF Procedures Manual (February 1, 2008).

(c) For projects serving two or more municipalities, the Applicant must submit the executed inter-municipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed sewage collection system or sewage treatment facility.

(d) In accordance with OAR Chapter 340, division 052, Applicants for construction-only loans must submit Department approved plans and specifications for the project as applicable.

(e) For projects with estimated costs in excess of \$10 million, the Applicant must submit a value engineering study prepared in accordance with the requirements of the CWSRF Procedures Manual (February 1, 2008).

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative correction 10-29-98; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08

### **Funding under the 2009 American Recovery and Reinvestment Act (Act)**

#### **340-054-0098**

##### **Definitions**

The following definitions apply to OAR 340-054-0098 through OAR 340-054-0108:

(1) “Act” means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, signed into law on February 17, 2009.

(2) “Principal forgiveness” means the portion of the total amount borrowed that is not required to be repaid.

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

#### **340-054-0100**

##### **Implementation within the Clean Water State Revolving Fund Program**

(1) OAR 340-054-0098 through OAR 340-054-0108 prescribe the use of Act funds through the Clean Water State Revolving Fund (CWSRF) when such funds are available to the department.

(2) When Act funds are available to the department, these funds must be awarded to public agencies in accordance with the Act and are subject to the requirements of the Clean Water State Revolving Fund.

(3) All requirements for projects funded under the Act not specifically addressed in OAR 340-054-0098 through OAR 340-054-0108 are subject to OAR 340-054-0001 through OAR 340-054-0065.

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

**340-054-0102**  
**Project Eligibility under the Act**

(1) Eligibility for funding under the Act is the same as prescribed in OAR 340-054-0015(1) except planning, as defined in OAR 340-054-0010(38), is not eligible.

(2) The acquisition of land for any purpose, or the development or purchase of an easement are not eligible under the Act.

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

**340-054-0104**  
**Use of Funds, Intended Use Plan under the Act**

(1) Funding purpose. Notwithstanding OAR 340-054-0020, funding provided under the Act may be used only for the following CWSRF purposes:

- (a) To make loans, or purchase bonds,
- (b) To pay CWSRF program administration costs to the extent allowed by federal law,
- (c) To earn interest on fund accounts.

(2) Loan Increases. Notwithstanding OAR 340-054-0025(6)(c), loan increases using Act funding will only be made to loans funded by the Act and only to the extent consistent with OAR 340-054-0106.

(3) Existing loan agreement. A borrower with a loan agreement executed prior to October 1, 2008 is not eligible to receive funding under the Act for a project as described and funded under that existing loan agreement.

(4) Loan reserve. Notwithstanding OAR 340-054-0065(2)(c)(B), the required reserve of any individual loan cannot be funded with CWSRF loan proceeds provided from the Act.

(5) Intended Use Plan (IUP):

- (a) A project must be listed in the Intended Use Plan to be eligible for funding under the Act.

(b) Notwithstanding OAR 340-054-0025(5)(d), the department must provide at least 14 days for public comments on the draft Intended Use Plan.

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

**340-054-0106**  
**Allocation of Act Funds**

Notwithstanding OAR 340-054-0025(6), funds made available by the Act must be allocated as follows:

(1) Funding of applicants. Funds will be offered to an applicant on the project priority list in rank order, subject to eligibility. A project is not eligible unless all required documentation is complete and appropriate environmental review, including any required notice and opportunity for public comment, has been completed at the time the department finalizes the intended use plan.

(2) Applicant's funding limit. The department will determine the amount of funding to be provided to an applicant, but the amount of any loan may not exceed \$5 million per applicant, except as provided in section (3) of this rule.

(3) Allocation of remaining funds. If there are no applicants on the project priority list eligible for a loan under the Act, a borrower that has received partial funding under the Act may be allocated additional funding. The department may allocate the remaining funds to a borrower based on rank order not to exceed 25 percent of the remaining funds or \$2 million, whichever is greater.

(4) Green Project Reserve. The department must establish a green project reserve with 20 percent of the funding received under the Act for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. If the department determines and certifies there are insufficient eligible projects for funding under this reserve, the reserve may be allocated to other eligible projects under the Act.

(5) Funding categories. Funds available under the Act may not be used to establish an Expedited Loan reserve, a Small Community reserve or a Planning reserve.

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

**340-054-0108**  
**Financial Terms**

Notwithstanding OAR 340-054-0065, the following financial terms apply to any loan funded under the Act.

(1) Interest rates. A loan may be provided at a zero percent interest rate.

(2) Principal forgiveness.

(a) A loan made to a small community as defined in OAR 340-054-0010(48) must include 75 percent principal forgiveness on the total amount borrowed.

(b) All other loans must include 50 percent principal forgiveness on the total amount borrowed.

(c) Principal forgiveness is granted upon execution of the loan agreement.

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

## Summary of Public Comment and Agency Response

**Title of Rulemaking: Amend the Clean Water State Revolving Fund – Permanent Rules**

**Prepared by: Larry McAllister**

**Date: August 25, 2009**

***Comment period***

The public comment period opened on July 23, 2009, and closed at 5 p.m. on August 24, 2009. DEQ held three public hearings:

- August 17, 2009 at 6 p.m. at the Jackson County Courthouse auditorium in Medford, Oregon. One person attended this hearing. No comments either orally or written were received at this hearing.
- August 18, 2009 at 6 p.m. at the eastern region DEQ office in Bend, Oregon. No one attended this hearing.
- August 19, 2009 at 6 p.m. at the DEQ Headquarters in Portland, Oregon. No one attended this hearing.

During the public comment period, DEQ received two comments by email and one oral comment during the public forum agenda at the August 21 Environmental Quality Commission meeting in Newport, Oregon.

***Organization of comments and responses***

Summaries of individual comments and the Department’s responses are provided below. The persons who provided each comment are referenced by a letter. A list of commenters and their reference letter follows the summary of comments and responses.

<b>Summary of Comments and Agency Responses</b>	
<b>Comment 1 Commenter A</b>	<p>I would like to thank the DEQ SRF program staff for their hard work in allocating the ARRA (American Recovery and Reinvestment Act) funding. The SRF loan received by CCSD No.1 and its initial funding from ARRA will help provide much needed sanitary sewer service to a portion of Clackamas County that has long wanted this service.</p> <p>CCSD No.1 will need additional allocations to this first loan to assure successful financing of the entire project. Does the source of funds for the initial allocation under this SRF loan agreement have any impact on the ability of CCSD No. 1 to receive additional allocations to this agreement from other funds available to the SRF program? Is this initial allocation, funded by the ARRA, a “one-time” thing and once spent, requires that either the funded project be completed or, if not, be resubmitted to the SRF program for another review and ranking in order to obtain the remaining funding necessary?</p>





<p><b>DEQ Response</b></p>	<p>An initial allocation funded by ARRA does not restrict a borrower from requesting an increase of funding from conventional SRF funding. Once funded, a project with the original scope of work does not have to be resubmitted, reviewed and ranked again to acquire an increase in funding.</p> <p>Because the program has limited funds to provide increases to projects, any increases are allocated based on a project's rank and the availability of funds to provide such increases.</p> <p>No changes were made in response to these comments.</p>
<p><b>Comment 2 Commenter B</b></p>	<p>ACWA supports the proposed rules. We appreciate our strong working relationship with Oregon DEQ and its willingness to involve local governments in developing this approach to the additional federal stimulus dollars dedicated to clean water infrastructure projects in Oregon.</p> <p>ACWA members are very interested in green infrastructure projects, and many communities are incorporating green elements into their wastewater and stormwater utility improvements including green infrastructure, energy efficiency and renewable energy projects.</p> <p>Loans at 0% interest and the principle forgiveness provisions are very important to the communities that are able to secure a loan under the State Revolving Loan Fund rules. 0% interest rates and principle forgiveness translate into direct savings for rate payers in the communities receiving those funds.</p>
<p><b>DEQ Response</b></p>	<p>Comments noted. No changes were made in response to these comments.</p>
<p><b>Comment 3 Commenter C</b></p>	<p>DEQ's proposed permanent rules frustrate the intent of Congress and the American Recovery and Reinvestment Act of 2009 (ARRA) by conservatively interpreting how ARRA funds can be spent. ARRA restrictions indicate funds cannot be used to refinance or restructure loans existing before October 1, 2008. ARRA does not restrict states from providing supplemental ARRA funded loans to communities with existing Clean Water State Revolving Fund loans.</p> <p>Congressional intent in establishing ARRA was to fund projects that are ready to proceed and provide the best opportunity to stimulate the local economy. DEQ is proposing that funding be limited to new projects only. Existing projects, evidently because they have arranged for potential funding and completed preliminary ground work, will not be eligible for ARRA funding under the DEQ rule. Inhibiting funding from existing projects will result in a lost opportunity to stimulate the economy.</p> <p>The proposed rules will frustrate the intent of ARRA and the opportunities meant for cities like Coburg. DEQ should follow regulations intended by Congress and the Environmental Protection Agency and not propose additional restrictions on the use of ARRA funds.</p>

<b>DEQ Response</b>	<p>DEQ consulted with EPA in developing the rules and wrote rules to support the intent of the Act to fund new projects that would provide and create jobs. DEQ's intent was not to provide a better loan deal to existing projects, but rather fund new projects, and therefore developed rules based on the agency's appropriate discretion in developing policy to address the use of ARRA funds for new projects.</p> <p>No changes were made in response to these comments.</p>
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<b>List of Commenters and Reference Letter</b>				
<b>Reference Letter</b>	<b>Name</b>	<b>Organization</b>	<b>Address</b>	<b>Submittal Date</b>
A	Doug Waugh, Finance Manager	Water Environment Services, Clackamas County	150 Beavercreek Road, Oregon City, OR 97045	July 29, 2009
B	Janet Gillaspie, Executive Director	Oregon Association of Clean Water Agencies	537 SE Ash, Suite 12, Portland, OR 97214	August 19, 2009
C	Milo Meacham, Attorney	Lane Council of Governments, representing the City of Coburg	859 Willamette Street, Suite 500 Eugene, OR 97401-2910	August 21, 2009

**State of Oregon**  
**Department of Environmental Quality**

**Memorandum**

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**Presiding Officer's Report**

Date: August 25, 2009

To: Environmental Quality Commission

From: Larry McAllister, Presiding Officer

Subject: Presiding Officer's Report for Rulemaking Hearing  
Title of Proposal: Amend the Clean Water State Revolving Fund – Permanent Rules

**Hearing #1**

Hearing Date and Time: **August 17, 2009, 6 p.m.**  
Hearing Location: Jackson County Courthouse Auditorium, **Medford, Oregon**

The Department convened the rulemaking hearing on the proposal referenced above at 6:10 p.m. and closed it at 7:02 p.m. People were asked to sign registration forms if they wished to present comments. People were also advised that the hearing was being recorded.

Chuck Root, representing Rogue Valley Sewer Services, attended the hearing; but chose not to comment orally or submit a written comment.

Before opening the hearing for comments, the presiding officer briefly explained the rulemaking proposal and procedures for the hearing. No comments, either oral or written were submitted at this hearing.

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**Hearing #2**

Hearing Date and Time: **August 18, 2009, 6 p.m.**  
Hearing Location: DEQ Eastern Regional Office, **Bend, Oregon**

The Department convened the rulemaking hearing on the proposal referenced above at 6:15 p.m. and closed it at 7:03 p.m.

With the exception of the Presiding Officer, no other persons attended the hearing and no comments were submitted.

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**Hearing #3**

Hearing Date and Time: **August 19, 2009, 6:00 p.m.**

Hearing Location: DEQ Headquarters, **Portland, Oregon**

The Department convened the rulemaking hearing on the proposal referenced above at 6:20 p.m. and closed it at 7:04 p.m.

With the exception of the Presiding Officer, no other persons attended the hearing and no comments were submitted.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

**Relationship to Federal Requirements**

**Amend the Clean Water State Revolving Fund – Permanent Rules**

*Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).*

**1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?**

DEQ's Clean Water State Revolving Fund (CWSRF) is administered in Oregon under the federal Clean Water State Revolving Fund program authorized by title VI of the Clean Water Act. This rulemaking will amend DEQ's CWSRF program to also address requirements of the American Recovery and Reinvestment Act of 2009.

The proposed amendments are not different from or in addition to requirements of either the Clean Water Act or the American Recovery and Reinvestment Act. Both federal programs allow states flexibility in how federal program requirements are implemented. DEQ is exercising this flexibility both in defining eligible projects and the level of incentives to be incorporated in loans.

The American Recovery and Reinvestment Act (the Act) provides economic stimulus funds to states to be incorporated into their CWSRF programs. The U.S. Environmental Protection Agency (EPA) determined funds may not be used to provide assistance for the purchase or refinancing of municipal debt or restructuring outstanding CWSRF loans unless the initial debt was incurred on or after October 1, 2008. DEQ is imposing limitations beyond the Act, making any project funded by the CWSRF loan program prior to the October 1, 2008 date ineligible.

Another important provision of the Act requires at least fifty percent of the grant received by a state provide "additional subsidization" to eligible recipients. Yet, the Act allows each state to decide if that additional incentive will be offered as a negative interest rate, grants, principal forgiveness or a combination of these. DEQ chose to provide principal forgiveness. So the proposed amendments to DEQ's CWSRF loan program will establish incentives different from the incentives offered by other states, but allowed under the flexible requirements of the Act.

If adopted, the proposed amendments will align DEQ's CWSRF program with the requirements of both the Clean Water Act and the American Recovery and Reinvestment Act.

**2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).**

The proposed amendments are not different from, or in addition to, either the Clean Water Act or the American Recovery and Reinvestment Act. Describing any reasons here for any differences is not necessary.

**3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.**

DEQ considered the alternatives available within the Act in providing an additional subsidization, but no alternatives outside the Act itself were considered.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Chapter 340  
 Proposed Rulemaking

STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

**Amend Clean Water State Revolving Fund - Permanent Rules**

This form accompanies a Notice of Proposed Rulemaking

<b>Title of Proposed Rulemaking</b>	Amend Clean Water State Revolving Fund - Permanent Rules. Chapter 340, Division 54
<b>Statutory Authority or other Legal Authority</b>	The Oregon Department of Environmental Quality (DEQ) and the Environmental Quality Commission (EQC) have the statutory authority to address this issue under ORS 468.020 and 468.423 - 468.440.  Additional authority is provided by the American Recovery and Reinvestment Act of 2009 (Public Law 111-5).
<b>Statutes Implemented</b>	These proposed rules implement ORS 468.423 - 468.440.
<b>Need for the Rule(s)</b>	President Obama signed the American Recovery and Reinvestment Act of 2009 (the Act) in February 2009. The Act provides economic stimulus funds to the federal Clean Water State Revolving Fund (CWSRF) loan program that is administered by the U.S. Environmental Protection Agency (EPA). The EPA allocated \$44.3 million in funds to Oregon DEQ's CWSRF program. In April 2009, the EQC adopted temporary amendments to DEQ's CWSRF program administrative rules to ensure the program addressed all requirements of the Act and therefore was eligible to receive the \$44 million capitalization grant.  By law, the temporary amendments adopted by the EQC in April will expire in 180 days (late October). This permanent rulemaking is necessary to ensure DEQ is able to meet the requirements of the Act and to receive possible additional funds from the Act if those funds become available after October 2009. The intention of this rulemaking is to permanently adopt the temporary amendments with only minimal changes in language necessary to ensure DEQ and borrowers are able to comply with requirements of the Act.
<b>Documents Relied Upon for Rulemaking</b>	The principal documents relied upon in preparing this rulemaking include: <ul style="list-style-type: none"> <li>• The American Recovery and Reinvestment Act of 2009;</li> <li>• U.S. Environmental Protection Agency Memo dated March 2, 2009 from the EPA Office of Wastewater Management – guidance document on awarding capitalization grants under the Act;</li> <li>• Oregon administrative rules, chapter 340, division 54.</li> </ul> <p>These documents are available from DEQ's Water Quality Division, 811 SW Sixth Avenue, Portland Oregon. To arrange to review these documents call Larry McAllister, (503) 229-6412.</p>
<b>Requests for Other Options</b>	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
<b>Fiscal and Economic Impact, Statement of Cost Compliance</b>	
<b>Overview</b>	Adoption of the proposed rule amendments will allow DEQ's CWSRF program to address certain requirements of the American Recovery and Reinvestment Act. As a result of addressing those requirements, DEQ's CWSRF loan program was eligible for \$44.3 million in funding from the Act. The

	<p>additional funds will be used for loans incorporating zero percent interest rates and substantial principal forgiveness. The incentives of these loans will make it possible for borrowers to substantially reduce the cost of needed water quality improvement projects</p> <p>These loans will be available to cities, counties and other public entities. There are additional reporting requirements under ARRA associated with the loans, but the cost of that reporting are expected to be negligible.</p>	
<p><b>Impacts on the General Public</b></p>	<p>The adoption of the proposed rules will have no direct impact on the general public. Borrowers of these loans are limited to public agencies and they will benefit from the additional subsidization of the loans offered under the rules in financing their water quality projects. For example, a loan made to a small community would include a subsidy of 75% principal forgiveness. In this example, only \$250,000 of a \$1 million loan would have to be repaid to DEQ.</p> <p>The public should benefit from the water quality improvements made possible by projects receiving CWSRF loans. Due to variables such as the type and size of the project and a community's population, quantifying specific fiscal impacts to the public from this rulemaking is beyond the scope of this fiscal analysis.</p>	
<p><b>Impacts to Small Business</b> (50 or fewer employees – ORS183.310(10))</p>	<p>Small businesses are not eligible applicants to the CWSRF loan program, so the proposed rules will have no measurable direct impact on Oregon's small businesses.</p> <p>DEQ's funding of additional water quality improvement projects may increase the demand for some services provided by Oregon's small businesses such as consulting and construction services.</p>	
<p><b>Cost of Compliance on Small Business</b> (50 or fewer employees – ORS183.310(10))</p>	<p>a) Estimated number of small businesses subject to the proposed rule</p>	<p>Small businesses are not eligible applicants to the CWSRF program and are not subject to the proposed rules.</p>
	<p>b) Types of businesses and industries with small businesses subject to the proposed rule</p>	<p>There are various types and numbers of companies who might indirectly benefit from the proposed rules. These primarily include consultants and contractors who would be employed to design and construct funded projects.</p>
	<p>c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services</p>	<p>The Act does require additional reporting by borrowers. As contractors or consultants to borrowers, small businesses may be required to report regularly on the number of jobs created and hours worked.</p>
	<p>d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule</p>	<p>This information is not available. The additional reporting (see above) is the only identified additional administrative activities associated with CWSRF loans using Act funds.</p>
	<p>e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking</p>	<p>Small businesses were not involved in the development of the proposed rules.</p>
<p><b>Impacts on Large Business</b> (all businesses that are not "small businesses" under ORS183.310(10))</p>	<p>If adopted, the proposed rules are not expected to have any measurable direct impact on Oregon's large businesses. Businesses are not eligible applicants to the CWSRF loan program and so are not expected to be impacted by the proposed changes in the loan program.</p>	



<b>Impacts on Local Government</b>	<p>Local governments are the primary borrowers of CWSRF loans. The proposed rule revisions will ensure that local governments (borrowers) remain in compliance with the requirements of the Act.</p> <p>The generous incentives within these loans would result in measurable project cost savings compared to most other financing options available. Again, as an example, a small community in Oregon with a population of 5,000 or less might qualify for 75% of the cost of their wastewater project being forgiven. Other communities with larger populations qualifying for these loans might have 50% of their loan amount forgiven if the proposed rules are adopted. Determining specific fiscal impacts to local governments requires information on variables that is beyond the scope of this fiscal analysis.</p>
<b>Impacts on State Agencies other than DEQ</b>	<p>It is not expected the proposed rules will have a measurable impact on other state agencies, although certain agencies play a role in the CWSRF loan program's environmental review process. For instance, the Department of Land Conservation and Development (DLCD) is responsible for evaluating certain environmental impacts of projects receiving CWSRF funding. Additional projects (due to Act funding) may result in additional environmental review work by staff at DLCD.</p>
<b>Impacts on DEQ</b>	<p>Adoption of the proposed rule amendments will have no significant impact on DEQ's CWSRF program or the Department. The related activities due to the availability of the Act funding are being addressed with current DEQ resources.</p>
<b>Assumptions</b>	<p>The proposed permanent rules are critical for DEQ to successfully implement the American Recovery and Reinvestment Act. The rules will ensure Oregon's CWSRF loan program and its borrowers continue to meet the requirements of the Act at that time the temporary rules expire.</p>
<b>Housing Costs</b>	<p>DEQ has determined that this proposed rulemaking will have no measurable effect 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.</p>
<b>Administrative Rule Advisory Committee</b>	<p>An advisory committee was not used in developing this permanent rulemaking. Because this rulemaking does not address new policy issues, an advisory committee was not convened. A financial work group provided policy direction during the development of the earlier temporary rule language.</p>

Larry McAllister  
 Prepared by

Larry McAllister  
 Printed name

7-14-09  
 Date

J. P. Adams  
 Approved by DEQ Budget Office

JAMES ROYS  
 Printed name

7-14-09  
 Date

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
**Land Use Evaluation Statement**

Rulemaking Proposal  
for

**Amend the Clean Water State Revolving Fund - Permanent Rules**

**1. Explain the purpose of the proposed rules.**

The American Recovery and Reinvestment Act of 2009 (the Act) allows the U.S. Environmental Protection Agency to allocate \$44.3 million to Oregon DEQ's Clean Water State Revolving Fund to create jobs and promote economic recovery. To meet the requirements of the Act, the Environmental Quality Commission (EQC) adopted temporary amendments to DEQ's CWSRF loan program administrative rules in April 2009. By law, these temporary rules will expire in October 2009. The adoption of this permanent rulemaking will replace these temporary rules and ensure DEQ's program will meet the requirements of the Act.

**2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?**

Yes X No \_\_\_\_\_

**a. If yes, identify existing program/rule/activity:**

Oregon administrative rule 340-018-0030(5)(b) identifies the approval of a state revolving loan application as one of DEQ's programs and actions determined to have significant effects on land use.

**b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?**

Yes X No \_\_\_\_\_ (if no, explain):

**c. If no, apply the following criteria to the proposed rules.**

NA

- 3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.**

NA