

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.

(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