

State of Oregon
Department of Environmental Quality

Memorandum

Date: Nov. 16, 2012

To: Environmental Quality Commission

From: Dick Pedersen, Director 

Subject: Agenda item E, Action item, rule proposal: Clean Water State Revolving Fund program rules that regulate awarding financial assistance to public agencies
Dec. 6-7, 2012, EQC meeting

Why this is important

Oregon's Clean Water State Revolving Fund loan program provides low-interest loans to public agencies for the planning, design and construction of projects that will prevent or mitigate water pollution. DEQ administers the program under Title VI of the federal Clean Water Act and the program is funded through federal capitalization grants, fund investment earnings and loan repayments.

DEQ is proposing rule amendments to improve the program's ability to provide financial assistance to public agencies that have diverse water quality improvement project needs, provide clarity about the loan program's funding process and ensure long-term longevity of the revolving fund.

DEQ recommendation and EQC motion

DEQ recommends that the Oregon Environmental Quality Commission adopt the proposed amendments to Oregon Administrative Rules Chapter 340, Division 54, as presented in attachment A.

Background and need for rulemaking

Title VI of the federal Clean Water Act allows states to adapt their own Clean Water State Revolving Fund programs in certain respects with how funding resources are targeted and what specific loan terms are including interest rates. DEQ implements the program under an operating agreement with EPA, and EPA provides oversight and technical assistance. Since the program was established under the Clean Water Act amendments of 1987, changing federal regulations and state water quality improvement priorities have required DEQ to continually align the program's administrative rules to meet these regulations and priorities.

The EQC adopted Clean Water State Revolving Fund program rules in March 1989 and DEQ made the first loan to the City of Portland in September 1990. The program has made loans to 146 communities and other public agencies for a variety of water quality improvement

projects including wastewater treatment works, collector sewers, sanitary and combined sewer overflow correction, stormwater management and irrigation conveyance systems. Nonpoint source and estuary activities such as watershed management, wetlands protection and contaminated urban and rural runoff control are also considered eligible projects.

Many wastewater treatment and collection facilities were constructed under the federal construction grants program from 1972 through 1990. The need for funding projects due to aging wastewater facility infrastructure and more stringent water quality standards has grown tremendously in the last decade while communities continue to face financial challenges in funding these projects. DEQ recognizes that communities and organizations also have an interest to better integrate nonpoint source pollution projects in the program.

DEQ receives an annual capitalization grant from EPA that averages about \$15 million. States are required to provide matching funds equal to 20 percent of the capitalization grant and Oregon provides this through the sale of general obligation bonds.

DEQ awards funding based on a competitive application process. Project ranking criteria determine how a project ranks against other projects, and the order determines funding priority. The Clean Water State Revolving Fund loan program commits an average of about \$60 million per year through signed loan agreements. The total amount of loan agreements DEQ has signed since the first loan was executed with the City of Portland is about \$1billion. The program is a self-sustaining fund.

The proposed rules clarify that public agencies can address water quality improvement needs through integrated approaches and the rules encourage planning efforts through a separate ranking process and loan reserve. The rules also focus on small communities by prioritizing how principal forgiveness is awarded and making more funds available in the small community reserve.

Effect of rule

If adopted, the proposed rules would:

- Clarify definitions of “applicant”, “borrower” and “public agency” and delete unnecessary definitions not applicable to the rules.
- Revise the definition of a small community from 5,000 or less to 10,000 or less population.
- Broaden and clarify current project eligibility rules to include more types of water quality improvement projects that could

receive program funding. Project eligibility determines which projects can receive funding and the current rules may be a barrier for funding nonpoint source projects.

- Clarify that stormwater projects are eligible for the funds and are included as a project type when reference is made to wastewater facility, nonpoint source control or estuary management project.
- Clarify loan application requirements.
- Align project ranking criteria more closely with DEQ's water quality priorities and ensure criteria are applicable to all types of water quality projects.
- Shift project ranking criteria emphasis from permit compliance or non-compliance to proactively improve, restore and maintain water quality, and encourage projects to integrate sustainable and "green" components with conventional "gray" infrastructure.
- Add new project planning criteria to encourage planning efforts.
- Provide a consistent, standardized scoring system for project applications.
- Improve funding availability for small communities by increasing the Small Community Reserve from 15 percent of total available funds to 25 percent.
- Eliminate the Expedited Loan Reserve, as this reserve has never been used.
- Increase the initial maximum planning loan amount from \$150,000 to \$250,000.
- Continue to award loan increases to existing projects before funding new projects.
- Ensure a borrower takes reasonable steps to begin using loan proceeds.
- Delete the discretionary loan option as the proposed rules provide financial terms that make this loan type obsolete. DEQ has not used this loan type over the last 10 years.
- Reduce interest rates for all communities, including lower interest rates for small communities with less than the statewide median household income.
- Reduce the annual loan fee from 0.5 percent to 0.25 percent from Jan. 1, 2013, through Dec. 31, 2014, to align the program's administrative account balance with program expenditures. The temporary annual loan fee reduction will benefit borrowers and not impact DEQ's ability to administer the program.
- Award principal forgiveness for planning, design and construction loans on a priority basis; first, to small communities with less than statewide median household

income, and then to other small communities. If there are no eligible small community projects, DEQ could award principal forgiveness to large communities with less than statewide median household income for design and construction loans.

- Delete the Wastewater Hardship Grant Program as this program was originally established by EPA and is obsolete.

Commission authority

The commission has authority to take this action under ORS 468.020.

Key issues

The proposed rules focus on how the Clean Water State Revolving Fund program funds projects that address water quality benefits and the relationship of those benefits to a watershed. Innovative projects and stormwater management are clearly addressed as eligible projects and project criteria are more inclusive of these types of projects.

Small community needs are addressed in the rules by increasing available funding and providing lower interest rates. Priority for available principal forgiveness is given to small communities with less than statewide median household income. All communities will benefit from a reduced annual loan for a two-year period while DEQ's ability to administer the program will not be impacted.

DEQ recognizes the program must continue to address and support communities' needs and ensure the program continues to operate in a sound financial manner.

Public outreach

DEQ convened the Clean Water State Revolving Fund Advisory Committee to provide recommendations on proposed rule amendments for the program. The committee met monthly from May 2011 through March 2012, and presented its recommendations to the commission at the June 2012 meeting.

DEQ received public comment on the proposed rules from Aug. 1, 2012, through 5 p.m. on Sept. 14, 2012, and held three public hearings in Portland, Bend and Medford. Results of public input are provided as attachments B and C.

Next steps

If the commission adopts the proposed rule amendments, the rules become effective upon filing with the Oregon Secretary of State. After filing the rules, DEQ staff will:

- Provide outreach to external stakeholder groups, including other funding agencies, about the rule changes and provide technical

- Revise and post application forms to DEQ's web site, and update fact sheets and program documents.
- Revise the loan agreement template to reflect rule changes.
- Notify current loan recipients about the annual fee change and adjust their repayment schedules.
- Work with EPA and revise the operating agreement, annual report and intended use plan as needed.
- Convene standing advisory committee to address potential future federal or state regulatory changes.
- Assist Co-speaker Hanna and Representative Freeman with convening relevant entities to identify better ways to advise communities on the best cost effective solutions for their wastewater treatment needs.

Attachments

- A. Proposed rule revisions
- B. Summary of public comment and agency responses
- C. Presiding Officer reports 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

- Clean Water State Revolving Fund Advisory Committee report
- Legal notice of proposed rulemaking hearing
- Rulemaking announcement
- Rule Implementation Plan

Approved:

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