**Summary of Public Comment and Agency Responses**

**Title of Rulemaking: Clean Water State Revolving Fund Program Rules Update**

**Prepared by:**Judy Johndohl, Water Quality Community and Program Assistance Section

**Date:** Oct. 5, 2012

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| Comment period | The public comment period opened Aug. 1, 2012, and closed at 5 p.m. on Sept. 14, 2012. DEQ held public hearings on the following dates at the following locations:   * Sept. 4, 2012, 3 p.m. Oregon DEQ Headquarters, Portland and DEQ Pendleton and Eugene offices via conference call * Sept. 5, 2012, 3 p.m. DEQ Bend office * Sept. 6, 2012, 3 p.m. DEQ Medford office   No one attended the hearings. |
| Organization of comments and responses | Summaries of individual comments received by email and DEQ's responses are provided below. When a person’s comment included multiple topics, that comment is divided by topic and each is addressed separately. Commenters are referenced by number. A list of commenters and their reference numbers follows the comments and responses. |

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| ***Summary of Comments and Agency Responses*** |

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| ***Comment 1*** | The Tribe appreciates DEQ taking proactive steps to modify the State Revolving Fund program in a way that attempts to deal with some of the more difficult to control pollutant sources including stormwater and non-point sources. Of particular interest, the Tribe supports the various rule changes including OAR 340-054-0015 that clarifies program money is available to deal with stormwater, and inflow and infiltration issues that can cause unforeseen water quality issues and create difficult problems for wastewater treatment plant operators.  Commenter 1 |
| ***Response*** | DEQ acknowledges these comments in support of the proposed rule changes. |
| ***Comment 2*** | The Tribe strongly supports DEQ’s goal of moving away from the compliance/non-compliance emphasis for program funds. With limited funds available, program funds should be targeted for real and demonstrable water quality and environmental improvement rather than directed to solve issues related to permit compliance.  Commenter 1 |
| ***Response*** | DEQ acknowledges these comments in support of the proposed rule objectives. |

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| ***Comment 3*** | Another concept that could be explored would be creating an eligible project category for infrastructure projects that increase water quantity, by reducing stream withdrawals or otherwise keeping more water in streams and rivers. This is addressed somewhat in the provisions for “green” components, and water recycling, but there may be other avenues that have not been explored.  Commenter 1 |
| ***Response*** | The proposed project ranking criteria in OAR 340-054-0026, Table 1, 2F-I reflect EPA's guidance on qualifying projects that can be considered for the green project reserve as EPA's capitalization grant requires. These criteria are new and were recommended by the CWSRF Advisory Committee to support projects that integrate sustainable and "green" technology with traditional conventional solutions. Water efficiency specifically means conservation and reuse efforts, as well as water loss reduction and prevention.  No changes were made to the proposed rules in response to this comment. |
| ***Comment 4*** | The Tribe has not sought to use the SRF program in the past although it appreciates DEQ is clarifying the program is open to Indian tribes and tribal corporation/entities as stated in OAR 340-054-0010(26). Many tribes do not have access to low interest loans to finance large capacity and infrastructure projects such as wastewater/stormwater treatment facilities. This is a highly beneficial change for Oregon tribes and Oregon’s waters.  Commenter 1 |
| ***Response*** | The proposed rules added a definition for "public agency" [OAR 340-054-0010(26)] to clarify who may apply for a CWSRF loan based on state statute. DEQ was made aware that the proposed definition conflicted with the statute referenced by stating "and includes a tribal corporation, tribal agency or other tribal entity that is a federally recognized Indian tribal government." The statute referenced in the definition, ORS 468.423, includes "federally recognized Indian tribal government" as a public agency. If a tribal corporation, tribal agency or other tribal entity is a federally recognized Indian tribal government, it is eligible as a public agency. DEQ will delete the conflicting language in the rule and only reference the statute. |
| ***Comment 5*** | For infrastructure projects (i.e., non-planning related loans), the Tribe suggests DEQ consider instituting a pre- and post-project water quality monitoring process. This way DEQ can determine whether the projects it funds through the SRF program are achieving the desired outcomes. This data could be used to reassess priorities within the Intended Use Plan if the data shows some types of projects have more demonstrable water quality/quantity benefits than others.  Commenter 1 |
| ***Response*** | DEQ agrees that monitoring water quality benefits of funded projects provides valuable information for the CWSRF program. Water quality permitted projects receiving CWSRF funding are required by the permit to regularly report to DEQ on their operation and impact on water quality. Depending on the nature of a project, DEQ can require subsequent monitoring and reporting through provisions in the CWSRF loan agreement.  The proposed project ranking criteria in OAR 340-054-0026, Table 1, address water quality standards, public health considerations, and watershed benefits. DEQ relies on the ranking criteria and the Intended Use Plan to prioritize projects for funding.  No changes were made to the proposed rules in response to this comment. |

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| ***Comment 6*** | It is unclear how a project gets on the Intended Use Plan, and whether this is a meaningful requirement as stated in OAR 340-054-0022(2). OAR 340-054-0025 discusses the IUP, but says projects will be added to the IUP as applications are received, which seems like a circular process. The lack of clarity in this process may be an area where unseemly political lobbying could infiltrate the program such as whether projects are added to the plan, and how they are ranked. Additional clarification of this provision may be warranted.  Commenter 1 |
| ***Response*** | The federal Clean Water Act requires state CWSRF programs to annually develop and public notice an Intended Use Plan. The plan identifies projects the state proposes to fund each fiscal year and other program information. DEQ must submit the plan to EPA prior to receiving a capitalization grant.  DEQ agrees the Intended Use Plan process should be clear and based on further review of the proposed rules DEQ determined that no changes are needed. OAR 340-054-0025 describes how DEQ will develop, update, and provide public notice of the plan, and rank projects to develop a project priority list for the Intended Use Plan. Specific project ranking criteria are stated in OAR 340-054-0026 and 340-054-0027. DEQ's CWSRF program has a year-round "open" application process that allows an interested applicant to submit an application at any time. This type of process does not limit opportunities for an applicant to consider the CWSRF program for available funding throughout the year.  No changes were made to the proposed rules in response to these comments. |
| ***Comment 7*** | Some recurring language in the rulemaking could create confusion about using the CWSRF for stormwater projects. One of the goals of the advisory committee was to ensure that the CWSRF can be used for stormwater projects as stated in new language for eligible projects. In several places though throughout the rules, "wastewater facility, nonpoint source control or estuary management project" is repeated and doesn't include stormwater projects. This oversight could create unintended confusion about the use of CWSRF funds for stormwater projects, despite their inclusion in the list of eligible projects and activities. Stormwater should not be excluded from this frequently repeated list of project types and should be added in every instance where this series occurs. Suggested language is “a wastewater or stormwater facility, nonpoint source control or estuary management project.”  Commenter 2 |
| ***Response*** | Stormwater improvements are eligible for CWSRF funding although the rules don't specifically include the suggested reference when wastewater facility, nonpoint source control or estuary management project is stated. DEQ agrees that for clarification the rules should reference stormwater facility and has made the suggested changes to:   * OAR 340-054-0010(9), (17), (21), (22)(a) and (27)(a) * OAR 340-054-0022(3)(e) * OAR 340-054-0060(17)(a) * OAR 340-054-0065(2)(b)(A)   DEQ also reviewed OAR 340-054-0015(10) and clarified what is meant by stormwater facilities, systems or projects. A definition for "stormwater" was included in OAR 340-054-0010(30). |
| ***Comment 8*** | In the ranking criteria section, the advisory committee recommended doubling the point scale for 1C (addressing noncompliance with water quality standards). Why is that criteria’s value not doubled in the proposed rulemaking?  Commenter 2 |
| ***Response*** | DEQ inadvertently did not double the point scale for the ranking criterion noted (OAR 340-054-0026, Table 1, 1C) and has made the suggested change to double the point scale and include criterion 1C in OAR 340-054-0025(5)(b). |
| ***Comment 9*** | We are pleased that stormwater facilities are included in the list of eligible projects, without the limitation to nonpoint source stormwater projects as the rules described before. We also support the language used to describe stormwater projects, which includes some flexibility to fund different types of stormwater facilities that could be developed in the future.  Commenter 2 |
| ***Response*** | DEQ acknowledges these comments in support of the proposed rule language. |
| ***Comment 10*** | Several improvements have been made to the project ranking criteria, ensuring that it is transparent and straightforward, that projects addressing our state’s greatest water quality challenges will be prioritized, and including ranking points for projects that advance sustainability and integrate grey and green infrastructure. We believe it is appropriate for Oregon to include these criteria when ranking all projects, rather than relying solely on the green project reserve. Doing so will ensure limited funds are used for the most innovative, holistic projects that provide multiple, long-term benefits. This addition to the ranking criteria rightly extends to planning projects as well. We also support allocating points for projects that include a sponsorship option, which helps extend community and environmental benefits to nonpoint source projects beyond ratepayer supported utilities.  Commenter 2 |
| ***Response*** | DEQ acknowledges these comments in support of the proposed rule language. |
| ***Comment 11*** | Even though municipalities work hard to find a system for their communities that works best for them, they may not be aware that there are often multiple technologies that can all accomplish the same treatment standards. Our concern is that communities may unknowingly choose a system that is either less technically efficient or costlier than necessary, placing a greater than necessary financial burden on their citizens and ratepayers. We believe it is prudent to approve loans to municipalities based on a financially competitive system *and* to make sure that the municipality does not exceed a practical financial burden to its citizens.  We believe this rulemaking poses an opportunity for DEQ to reevaluate the SRF and make it and the communities it serves more technically and fiscally efficient.  Commenter 3 |

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| ***Response*** | The proposed rules reflect the CWSRF Advisory Committee's discussions that focused on technical program topic areas and financial provisions that impact affordability.  DEQ acknowledges how critical it is to ensure the CWSRF program is implemented in a technical and fiscally efficient manner. Although the rules do not dictate the manner in which the program operates, DEQ currently has six dedicated regional staff in the program to provide technical assistance to communities. Regional staff work with communities to help them understand what decisions need to be made to address water quality concerns. DEQ's Regional Solutions Team staff also provide CWSRF program assistance to communities.  Communities are encouraged through the facility planning process to assess their options, including cost considerations. DEQ will assist community officials and meet with those interested to help them evaluate their options. DEQ acknowledges some communities could benefit from more guidance on wastewater treatment options and financing strategies and continues to support efforts to help meet these needs.  DEQ intends to address these concerns with the CWSRF standing advisory committee to further discuss what role DEQ, as well as other entities, should take to improve the program to better assist communities in making sound financial decisions. DEQ anticipates convening the CWSRF standing advisory committee early next year. DEQ has also offered to 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.  No changes were made to the proposed rules in response to these comments. |

| ***List of Commenters and Reference Numbers*** | | | | |
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| **Reference**  **Number** | **Name** | **Organization** | **City** | **Date on comments** |
| 1 | Cheryle Kennedy | The Confederated Tribes of the Grand Ronde Community of Oregon | Grand Ronde, Oregon | Aug. 13, 2012 |
| 2 | Teresa Huntsinger | Oregon Environmental Council | Portland, Oregon | Sept. 13, 2012 |
| 3 | Co-Speaker Bruce Hanna and Representative Tim Freeman | Oregon Legislature -House District 7 and House District 2 | Salem, Oregon | Sept. 14, 2012 |