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**Date:** July 7, 2022

**To:** Environmental Quality Commission

**From:** Richard Whitman, Director

**Subject:** Item O: Clean Water State Revolving Fund Program and rulemaking updates (Informational)  
July 21-22, 2022, EQC meeting

**Why this is important**

Communities continue to face challenges with meeting water quality and infrastructure needs in Oregon, particularly disadvantaged and economically distressed communities that have limited capacity to afford rate increases and limited capacity to plan for and carry out improvement projects. DEQ's Clean Water State Revolving Fund Program provides financing, mainly in the form of low-cost loans, to communities across the state for water infrastructure projects and is beginning a rulemaking process to update the program based on recent changes to federal law and funding.

DEQ will present updates to the commission about:

- Bipartisan Infrastructure Law key provisions and priorities
- CWSRF 2022 rulemaking scope
- Key program and rulemaking milestones and timeline
- CWSRF program priorities and activities

**Background**

Oregon DEQ's Clean Water State Revolving Fund Program will receive a significant increase in funding under the Bipartisan Infrastructure Law over the next five years. As part of this funding, CWSRF will be able to provide more and lower-cost financing for water pollution control projects as well as some funding for technical assistance. The federal Environmental Protection Agency (EPA) guidance for this supplemental funding requires states administering the program to provide at least 49 percent in the form of forgivable loans, specifically to disadvantaged and economically distressed communities. CWSRF will also utilize new resources for technical assistance to help communities plan, develop, finance and manage projects. To achieve these goals, the Clean Water State Revolving Fund

Program will propose rule amendments to the commission to align the program with the new federal funding opportunities and guidance.

**Bipartisan  
Infrastructure  
Law**

The federal Bipartisan Infrastructure Law, or BIL, was signed into law Nov. 15, 2021. The legislation provides supplemental funding in addition to the annual base capitalization grant funds provided by EPA to states that operate Clean Water State Revolving Fund Programs.

BIL includes new provisions for funding that are specific to emerging contaminants, includes new requirements for increased principal forgiveness and prioritizes funding to “disadvantaged communities” as a means to address past underinvestment in many communities with environmental justice concerns.

DEQ will also be able to provide technical assistance to communities wishing to seek CWSRF money, through updates to some provisions of the Clean Water Act. BIL also includes Build America Buy America requirements, similar to past stimulus-related requirements to source materials from domestic companies.

BIL provides supplemental funding over five federal fiscal years, as seen in the table below, for a total of approximately \$125 million in additional funds for Oregon.

FFY2022	\$ 20,271,000
FFY2023	\$ 23,578,386
FFY2024	\$ 25,730,637
FFY2025	\$ 27,872,179
FFY2026	\$ 27,872,179
<b>Total</b>	<b>\$125,324,381</b>

As part of the law, there are additional requirements for DEQ in administering Oregon’s Clean Water State Revolving Fund Program:

- 49 percent of the supplemental capitalization grant amount must be provided as principal forgiveness
- State match required: FFY2022 and 2023 – 10 percent; 2024 through 2026 – 20 percent

The new law also provides specific funding for emerging contaminants, with \$1,064,000 available each year. Oregon annual capitalization grant for federal fiscal year 2022 is \$13 million. The new allowances for technical assistance will allow Oregon to use up to two percent of both the annual and supplemental grants to assist communities who may not have the available resources or technical background to complete loan documents and applications.

**Rulemaking  
scope and  
timelines**

To ensure the provisions of BIL are consistent with Oregon's regulations, the Clean Water State Revolving Fund Program is beginning to develop proposed rule changes for the commission to consider. DEQ has convened a 12-person Rules Advisory Committee, which includes a diverse group of people representing local, state, federal agencies, tribes, water and wastewater utilities, nonprofit organizations involved with environmental, health, and housing programs and services for low income and rural communities.

DEQ expects to hold three meetings of the committee, with the first meeting of the committee scheduled for July 29. During that meeting, DEQ will provide an overview of the CWSRF program, the BIL, the proposed rulemaking scope, affordability criteria and environmental justice metrics. The second and third meetings will include review of proposed rulemaking language, development of a fiscal impact statement and considerations of environmental and racial justice impacts of the proposed changes.

DEQ intends to issue draft rules for public notice in October 2022 and bring final proposed rules to the commission in early 2023. The committee members will continue to serve beyond the rulemaking as a standing advisory committee for 18 months to assist the program in implementing the new funding streams.

The intended scope of the rulemaking will address:

- Principal forgiveness
- Affordability criteria
- Project ranking and scoring
- Intended Use Plan
- Environmental justice and racial justice metrics

**Program priorities and activities**

**Technical Assistance**

DEQ is developing a request for proposals for contracting with eligible entities, including nonprofit technical assistance providers, to provide technical assistance to communities for project planning, development, finance and management and meeting federal requirements.

**Build America Buy America**

This new provision requires that infrastructure projects using federal funds include iron, steel, manufactured products, and construction materials that are produced in the United States. EPA has not yet issued formal guidance on implementation of this requirement, and CWSRF is intends to provide technical assistance for borrowers to meet the requirements.

**Emerging contaminants**

BIL includes funding available for addressing emerging contaminants, such as PFAS. CWSRF is working with communities to assess needs and opportunities to implement funding for projects that address emerging contaminants. DEQ and EPA also are exploring whether these funds may be used to address projects that reduce the sources of harmful algae blooms.

**EPA requirements**

DEQ is working with U.S. Environmental Protection Agency Region 10 and Headquarters on a regular basis to ensure clarity on guidance related to BIL funding, capitalization grants, intended use plans, reporting, and other requirements. CWSRF will continue to work closely with EPA to address program guidance appropriately and federal requirements are met.

**Program coordination and stakeholder engagement**

DEQ is coordinating with agency and organizational partners regarding BIL implementation including the Oregon Drinking Water State Revolving Fund program, the Oregon Health Authority, Business Oregon, and the U.S. Department of Agriculture's Rural Development program. DEQ is also conducting outreach with other organizations including the League of Oregon Cities regarding BIL.

**EQC involvement**

DEQ expects to propose rule revisions to EQC for the Clean Water State Revolving Fund Program in early 2023.

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*Clean Water State Revolving Fund Program*