



# Oregon Department of Environmental Quality

**Jan. 24, 2014**

**Oregon Environmental Quality Commission special meeting  
Rulemaking, Action item: A**

## **DEQ recommendation to EQC**

DEQ recommends that the Oregon Environmental Quality Commission adopt the proposed rules in Attachment A as part of chapter 340 of the Oregon Administrative Rules.

## **Overview**

### Short summary

DEQ proposes new and amended rules for the Clean Water State Revolving Fund to allow public agencies a longer-term option for financing treatment works projects. The new option would allow for a bond purchase agreement with repayment terms up to 30 years for treatment works projects such as wastewater treatment facility construction and upgrades, stormwater controls, and sewer improvements and replacement. Non-wastewater and non-stormwater treatment works projects such as stream restoration and irrigation improvements would not be eligible for the 30-year, longer-term financing under this proposal but would still be eligible for the 20-year loan option.

The proposed option would benefit smaller and lower-income communities by spreading the debt repayment over a longer period, thereby decreasing the financial burden on residents.

All new borrowers for new treatment works projects would have the option of the traditional Clean Water State Revolving Fund loan with terms up to 20 years or the new financing option of a bond purchase agreement with terms up to 30 years. Combining the two types of financing for new projects is not an option.

The proposed rules would limit refinancing of existing Clean Water State Revolving Fund treatment works loans to the most disadvantaged borrowers in the program. Economic status and loan characteristic criteria would determine the borrower's eligibility and refinancing is a one-time, limited-period offer.

For both new and existing eligible borrowers, the proposed rules would add interest rate premiums to the current base rates for the longer-term financing option to protect the fund's sustainability. The proposed three-tiered interest rate premium ranges from zero percent for the most disadvantaged communities to 0.5 percent for the least disadvantaged communities.

The proposed rules would not limit the amount of funds allocated for longer-term financing. Prioritization for general longer-term financing allocation and for incentives and reserves such as

green projects, small communities and principal forgiveness would remain the same as in existing rule.

#### Brief history

Oregon's Clean Water State Revolving Fund loan program provides funding to public agencies for water quality protection and improvement projects. Projects include wastewater treatment facility construction and upgrades, stormwater controls, sewer improvements and replacement, irrigation improvements and stream restoration. Low-interest rates and loan terms up to 20 years make this program an attractive alternative to borrowing from higher-interest bond markets.

DEQ updated Oregon's Clean Water State Revolving Fund rules in 2012 with input from the program's advisory committee. The 2012 rules made the program more affordable to communities by reducing loan interest rates and annual fees and offering further incentives for smaller communities. During the 2012 rulemaking, the advisory committee identified the option of offering a financing term longer than 20 years as a way to help make water quality improvements more affordable.

The federal Clean Water Act makes a distinction between a loan and a purchase of a debt obligation. Oregon law reflects the following regulations associated with financing in the Clean Water Act:

- Loan terms allow a maximum of 20 years. ORS 468.440(2)
- No limit on a term associated with buying or refinancing debt obligation for treatment works. ORS 468.429(2)(a)
- The Clean Water Act allows "extended term financing" that the U.S. Environmental Protection Agency denotes as a purchase or refinancing of new municipal debt obligations with a suggested repayment term not to exceed 30 years.
- Debt obligations are in the form of bonds or notes issued simultaneously with the release of Clean Water State Revolving Fund funds or as the purchase of pre-existing debt obligations. Clean Water Act Section 603(d)(2)

## Statement of need

What problem is DEQ trying to solve?

Current administrative rules limit the use of the fund for loans with terms up to 20 years. For some communities, loan terms associated with this shorter repayment period present a hardship for ratepayers.

How would the proposed rule solve the problem?

Although the federal Clean Water Act and Oregon law limit Clean Water State Revolving Fund loan terms not to exceed 20 years, purchasing or refinancing of debt obligations in the form of revenue bonds is permitted for terms not to exceed 30 years.

The proposed rules would allow public agencies starting a new treatment works project to apply for the traditional loan option with terms up to 20 years or the proposed financing option of issuing a bond purchase agreement with longer-term financing for up to 30 years. A small group of borrowers would have the option to refinance their existing Clean Water State Revolving Fund loans for treatment works projects through the process of selling DEQ a revenue bond.

Allowing longer-term financing for these projects would provide more affordable repayment terms for Oregon communities. An option for longer-term financing would especially benefit smaller and lower-income communities by spreading the debt repayment over a longer period, thereby decreasing the financial burden on residents if public agencies are able to avoid the need for large utility rate increases.

## Rules affected, authorities, supporting documents

Lead division                      Program or activity  
Water Quality                      Clean Water State Revolving Fund

### Chapter 340 action

Adopt                              OAR 340-054-0071, 340-054-0072  
Amend                              OAR 340-054-0010, OAR 340-054-0011

To help navigate rules under division 054 of chapter 340 rules, DEQ would add the title “Clean Water State Revolving Fund Loans” before OAR 340-054-0015.

### Statutory authority

ORS 468.020, 468.440

### Statute implemented

ORS 468.423-468.440

Documents relied on for rulemaking ORS 183.335(2)(b)(C)

Document title	Document location
Clean Water Act, Title VI – State Water Pollution Control Revolving Funds	<a href="http://www.epw.senate.gov/water.pdf">http://www.epw.senate.gov/water.pdf</a>
40 CFR Part 35 – State Water Pollution Control Revolving Funds	<a href="http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol1/pdf/CFR-2012-title40-vol1-part35-subpartK.pdf">http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol1/pdf/CFR-2012-title40-vol1-part35-subpartK.pdf</a>
Draft amendments to 40 CFR 35.3120 entitled “Guidance on Approval of Extended Term Financing Proposals by State Clean Water State Revolving Fund Programs and Clean Water State Revolving Fund Authorized Types.”	Oregon Department of Environmental Quality main office at 811 SW Sixth Ave., Portland, OR 97204
U.S. Environmental Protection Agency guidance and policy memos for the CWSRF program	Oregon Department of Environmental Quality main office at 811 SW Sixth Ave., Portland, OR 97204
CWSRF Advisory Committee Recommendations Report	<a href="http://www.deq.state.or.us/wq/loans/advisory.htm">http://www.deq.state.or.us/wq/loans/advisory.htm</a>

## Fee analysis

This rulemaking does not involve fees.

## Statement of fiscal and economic impact

[ORS 183.335 \(2\)\(b\)\(E\)](#)

### Fiscal and economic impact

The proposed rules provide a longer-term financing option to public agencies eligible to borrow Clean Water State Revolving Funds for treatment works projects.

The longer-term financing option requires a public agency to sell debt obligations in the form of revenue bonds to DEQ. The process of selling a revenue bond may require more effort and upfront costs to communities than required for a traditional loan. However, local governments would still have the option of pursuing a 20-year loan if they determine the economic costs of the new process of selling a revenue bond outweigh the economic benefits of the longer-term financing.

The proposed rules could increase administrative costs for the Oregon Department of Land Conservation and Development as well as DEQ if the proposed longer-term financing option results in additional funded and refinanced projects requiring more administrative time for application requirements such as environmental review. Financial impacts to the Clean Water State Revolving Fund will result in a slight decrease in the binding commitments, which is the total amount of money lent from the program, over a long period.

There are positive environmental benefits for Oregon resulting from projects that protect and improve water quality for human health, wildlife and aquatic life in Oregon's watersheds.

### Statement of Cost of Compliance

#### Impacts on public

The proposed rules would have no direct economic impact on the public. There may be *indirect* economic impacts to individuals located in a service area where the Clean Water State Revolving Fund loan funds a public agency project that affects sewer or other service rates. The proposed longer-term financing on new and existing debt obligations for treatment works projects may *indirectly* benefit individual ratepayers if the public agency is able to avoid rate increases.

#### Impact on other government entities other than DEQ

##### a. Local governments

Local governments are the primary borrowers of Clean Water State Revolving Fund loans. For the purpose of the program, local governments include cities, counties, sanitary districts, special districts, soil and water conservation districts and certain intergovernmental entities. The proposed rules would be an economic benefit to local governments. The length of debt obligation term is an important tool for financing affordability. Offering longer-term financing would especially benefit smaller and lower-income communities by spreading the public agency's debt repayment over a

longer period. In addition, the interest rates might decrease on the debt obligations for the small number of communities that would be refinancing their existing Clean Water State Revolving Fund loans, adding an additional economic benefit of paying less interest over time.

The longer-term financing option is an alternative financing option to a loan and is not the same as a loan. This option requires a public agency to sell debt obligations for treatment works projects in the form of revenue-secured bonds to DEQ. The process of selling a bond may require more effort and upfront costs to communities than is required for a traditional loan. Local governments would still have the option of pursuing a 20-year loan if they determine the economic costs of the proposed option of selling a revenue bond outweigh the economic benefits of the longer-term financing.

**b. State agencies**

DEQ expects the proposed rules to have an impact only on the Oregon Department of Land Conservation and Development. DLCD staff work evaluating environmental impacts of projects could increase if the proposed longer-term option results in additional funded projects.

**c. Impact on DEQ**

The Clean Water State Revolving Fund is self-sustaining in terms of administration and program costs. The proposed rules would have two limited fiscal impacts to the program but none to other DEQ programs. The growth of the overall program fund would slow over time due to longer financing terms.

Administrative costs: DEQ would incur additional administrative time and costs to refinance existing loans. Fourteen eligible borrowers could potentially refinance their existing Clean Water State Revolving Fund loans; therefore, DEQ expects existing staff would accomplish the work of buying revenue bonds from existing borrowers with minimal costs incurred over a limited period.

Programmatic impact: The U.S. Environmental Protection Agency guidelines for implementing longer-term financing require protecting the fund's perpetuity. EPA determined a program's financial viability would be affected by longer financing terms if the decrease in total binding commitments over a 60-year projection period exceeds 10 percent.

Adding the proposed three-tiered interest rate premium to the longer-term financing option protects the fund's perpetuity. The proposed premiums range from zero percent for the most disadvantaged communities to 0.5 percent for the least disadvantaged communities.

Assuming all future borrowers and the small group of the current borrowers, approximately 10.5 percent of the total fund balance, use longer-term financing for treatment works projects at their tiered interest rate, the total binding commitments would be approximately \$2.33 billion over a 60-year projection period. Without the longer-term financing option, the program's total binding commitments would be \$2.51 billion over a 60-year projection period. The difference is a seven percent

decrease if all borrowers used longer-term financing versus no longer-term financing. This is below EPA's 10 percent threshold.

Impact on large businesses (those with more than 50 employees)

The affect of the proposed rules on large businesses would be identical to the affect on small businesses described below.

Impact on small businesses (those with 50 or fewer employees) [ORS 183.336](#)

The proposed rules would have no direct economic impact to small businesses because they are not eligible to borrow Clean Water State Revolving Fund money.

There may be indirect economic impacts to small businesses located in public agency service areas where the program funds treatment works projects because those projects may affect sewer or other service rates. The proposed longer financing terms on debt obligations for treatment works projects may indirectly benefit small business ratepayers if the public agency is able to avoid large rate increases.

Construction-related businesses may indirectly benefit from Clean Water State Revolving Fund-funded construction if public agencies contract for their services.

a) Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.

None. Small businesses are not eligible to borrow these funds. An indirect cost savings may occur if the business is in a public agency service area and is a ratepayer.

b) Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.

None. Small businesses are not eligible to borrow these funds.

c) Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.

None. Small businesses are not eligible to borrow these funds.

d) Describe how DEQ involved small businesses in developing this proposed rule.

DEQ did not involve small businesses in this rulemaking as they are not directly affected by the program.

## Documents relied on for fiscal and economic impact

DEQ relied on the following principal documents to prepare this rulemaking and inform the fiscal and economic impact statement:

Document title	Document location
Clean Water Act, Title VI – State Water Pollution Control Revolving Funds	<a href="http://www.epw.senate.gov/water.pdf">http://www.epw.senate.gov/water.pdf</a>
40 CFR Part 35 – State Water Pollution Control Revolving Funds	<a href="http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol1/pdf/CFR-2012-title40-vol1-part35-subpartK.pdf">http://www.gpo.gov/fdsys/pkg/CFR-2012-title40-vol1/pdf/CFR-2012-title40-vol1-part35-subpartK.pdf</a>
EPA guidance and policy memos for the program	Oregon DEQ's main office at 811 SW Sixth Ave., Portland, OR 97204
Oregon Revised Statutes 468.423 – 468.440.	<a href="http://landru.leg.state.or.us/ors/468.html">http://landru.leg.state.or.us/ors/468.html</a>
Oregon Administrative Rules, Chapter 340, Division 54	<a href="http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_054.html">http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_054.html</a>
Clean Water State Revolving Fund Advisory Committee Recommendations Report	<a href="http://www.deq.state.or.us/wq/loans/advisory.htm">http://www.deq.state.or.us/wq/loans/advisory.htm</a>

## Advisory committee

DEQ convened a diverse, statewide Clean Water State Revolving Fund Advisory Committee in May 2013 that provided DEQ with recommendations on updating the Clean Water State Revolving Fund administrative rules. DEQ considered the committee's recommendations for this fiscal and economic impact statement. In compliance with ORS 183.333, DEQ asked for the committee's recommendations on:

- Whether the proposed rules would have a fiscal impact
- The extent of the impact
- Whether the proposed rules would have a significant impact on small businesses and comply with ORS 183.540

The committee reviewed the fiscal impact statement and documented its recommendation in a meeting Sept. 5, 2013.

## Housing cost

To comply with ORS 183.534, DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel.



*"It is the policy of this state that agencies shall seek to retain and promote the unique identity of Oregon by considering local conditions when an agency adopts policies and rules. However, since there are many federal laws and regulations that apply to activities that are also regulated by the state, it is also the policy of this state that agencies attempt to adopt rules that correspond with equivalent federal laws and rules..."*

### Relationship to federal requirements

The proposed rules are in addition to federal requirements and impose more stringent eligibility requirements for the optional longer-term financing. Section 603(d)(2) of the Clean Water Act allows states to use the Clean Water State Revolving Fund to buy or refinance the debt obligation of municipalities and intermunicipal and interstate agencies to fund any eligible project. The proposed rules for longer-term financing align with Oregon law that limits eligibility to buy or refinance the debt obligations of public agencies for only treatment works projects. All other parts of the proposed rules align and are not different from EPA's draft amendments to 40 CFR 35.3120 entitled "Guidance on Approval of Extended Term Financing Proposals by State Clean Water State Revolving Fund Programs and Clean Water State Revolving Fund Authorized Types."

### What alternatives did DEQ consider if any?

DEQ considered not moving forward with this rulemaking. This alternative would limit public agencies to the current financing option for use of the Clean Water State Revolving Fund through loans not to exceed 20 years. Allowing the option of longer-term financing for treatment works projects that protect or improve water quality would help make projects more affordable for Oregon communities. DEQ may consider future efforts to change Oregon law to allow non-treatment works projects to be eligible for longer-term financing.

## Land use

*“It is the Commission's policy to coordinate the Department's programs, rules and actions that affect land use with local acknowledged plans to the fullest degree possible.”*

ORS 197.180, OAR 660-030

### Land-use considerations

To determine whether the proposed Clean Water State Revolving Fund rules involve programs or actions considered a *land-use action*, DEQ considered:

- Statewide planning goals for specific references. Section III, subsection 2 of the DEQ State Agency Coordination Program document identifies the following statewide goals relating to DEQ's authority:

Goal	Title
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5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
11	Public Facilities and Services
16	Estuarial resources
19	Ocean Resources

- [OAR 340-018-0030](#) for EQC rules on land-use coordination. Division 18 requires DEQ to determine whether proposed rules will significantly affect land use. If yes, how will DEQ:
  - Comply with statewide land-use goals
  - Ensure compatibility with acknowledged comprehensive plans, which DEQ most commonly achieves by requiring a [Land Use Compatibility Statement](#)
- DEQ's mandate to protect public health, safety and the environment
- Whether DEQ is the primary authority responsible for land-use programs or actions in the proposed rules
- Present or future land uses identified in acknowledged comprehensive plans

### Determination

If the proposed rules result in more funded water quality improvement treatment works projects, there are implications for land use throughout the state. DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. Any new projects funded under these proposed rules would have to comply with OAR 340-054-0022(5)(e), which requires demonstration that the projects comply with land-use requirements in OAR 340-018-0050 before they receive program funding.

## Stakeholder and public involvement

### Advisory committee

DEQ established the Clean Water State Revolving Fund Advisory Committee in 2011 to address program issues and provide input to DEQ for the 2012 rulemaking. After the committee last met in 2012, DEQ's director appointed a 14-member standing Clean Water State Revolving Fund Advisory Committee that includes many of the original members. Current members represent interests from federal and state agencies, local governments, water and wastewater districts and utilities, watershed organizations, environmental advocacy groups, local conservation districts and the financial sector.

Roster

Name	Representing
Emily Ackland	Association of Oregon Counties
Robert Ault	Infrastructure Finance Authority
Raymond Bartlett	Economic and Financial Analysis
Tom Elliott	Oregon Department of Energy
Sam Goldstein	USDA Rural Development
Jason Green	Oregon Association of Water Utilities
Teresa Huntsinger	Oregon Environmental Council
Chris Marko	Rural Community Assistance Corporation
Todd Miller	League of Oregon Cities
Tom Salzer	Oregon Association of Conservation Districts
April Snell	Oregon Water Resources Congress
Carl Tappert	Special Districts Association of Oregon
Doug Waugh	Oregon Association of Clean Water Agencies
Joe Whitworth	The Freshwater Trust

DEQ convened the committee for this rulemaking in early 2013 and met with the committee four times between June and September 2013 to obtain recommendations on how the program should implement longer-term financing. Leah Feldon, manager for DEQ's Office of Compliance and Enforcement, facilitated the meetings. The primary purpose of the advisory committee meetings was to make recommendations to amend the program rules to include the longer-term financing option and to review the fiscal impact statement, specifically impact on small businesses. The committee developed a report detailing its recommendations and reviewed the Statement of Fiscal and Economic Impact section above.

## EQC prior involvement

DEQ shared general rulemaking information with the Oregon Environmental Quality Commission through the annual DEQ Rulemaking Plan review and monthly status report. DEQ also shared information about this rulemaking with the commission in the Oct.17, 2013, Director's report.

## Public notice

The November 2013 *[Oregon Bulletin](#)* published the Notice of Proposed Rulemaking with Hearing. DEQ also:

- Posted notice on DEQ's webpage <http://www.deq.state.or.us/regulations/proposedrules.htm> Oct. 25, 2013.
- E-mailed notice Oct. 25, 2013 to:
  - Interested parties and stakeholders through GovDelivery and email
  - The following key legislators required under ORS 183.335:
    - Sen. Jackie Dingfelder
    - Sen. Bill Hansell
    - Sen. Betsy Johnson
    - Sen. Doug Whitsett
    - Rep. Jules Bailey
    - Rep. Deborah Boone
    - Rep. Tim Freeman
    - Rep. Bruce Hanna
    - Rep. Bob Jenson
    - Rep. Mike McLane
    - Rep. Greg Smith
    - Rep. Brad Witt
  - Members of the advisory committee
  - EPA Region 10
  - DEQ regional and water quality program staff and regional solutions team

## Public hearings and comment

DEQ held public hearings Tuesday, Nov. 19, 2013, in six different DEQ office locations across the state at two different times of the day, totaling 12 public hearing sessions. The comment period closed on Dec. 2, 2013, at 5 p.m. DEQ received five public comments. The summary of comments and DEQ responses section below addresses each public comment. The commenter section below lists all people who provided comments on this proposal.

## Presiding Officers' Record

On Nov. 19, 2013, DEQ held hearings in its offices in Portland, Bend, Eugene, Coos Bay, Medford and Pendleton. DEQ staff were the presiding officers at each site, with Larry McAllister as the presiding officer at DEQ headquarters in Portland. Staff convened the hearings at 11 a.m. and then again at 4 p.m. on Nov. 19, 2013. The presiding officer summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form to indicate their intent to present comments.

According to [Oregon Administrative Rule 137-001-0030](#), Larry McAllister summarized the content of the notice given under [Oregon Revised Statute 183.335](#).

There were no attendees at any of the locations for either of the hearing times; the hearings were adjourned at 11:24 a.m. and 4:23 p.m. Therefore, there are no comments from the hearings in the summary of comments and DEQ responses.

## Close of public comment period

DEQ closed the comment period Dec. 2, 2013, at 5 p.m.

## Summary of comments and DEQ responses

The information below is a summary of comments received and DEQ's responses during the comment period. Original comments and DEQ's detailed response to comment two are on file with DEQ.

- |   |                 |  |
|---|-----------------|--|
| 1 | <b>Comment</b>  | Supportive of longer-term financing in the program as detailed in the rulemaking proposal. The commenters believe longer-term financing will make water quality improvement projects more affordable to Oregon communities. No changes to the proposed rules were suggested.                                 |
|   |                 | DEQ received four comments in this category from commenters 1 through 4 representing the City of Springfield, League of Oregon Cities, Special Districts Association of Oregon and the Oregon Association of Clean Water Agencies. Commenters are individually listed in the <i>Commenter</i> section below. |
|   | <b>Response</b> | DEQ acknowledges and appreciates this support and the commenters' participation during the development of this rulemaking.   |
| 2 | <b>Comment</b>  | Generally supportive of the proposed rules but thinks that they are not addressing the root of the problem. Commenter thinks that lower cost, regionally-specific options for water treatment projects are needed.   |
|   |                 | DEQ received one comment in this category from commenter 5, Senator Doug Whitsett, listed in the <i>Commenter</i> section below.   |

**Response** DEQ sent a detailed response directly to Senator Whitsett that is available for review on request. The response emphasized that DEQ is very committed to helping communities find the least-cost solutions to water treatment projects. The full response to the comment details the things that DEQ and partners are doing to help communities find least-cost solutions and low-cost financing for water treatment projects, in addition to the proposed rules for longer-term financing.

In addition to the above comments, EPA headquarters and EPA Region 10 provided their concurrence with the proposed rules. EPA approval is required by states that are pursuing a longer-term financing option in Clean Water State Revolving Fund programs. EPA approved DEQ's application for longer-term financing, which reflects the proposed rules, Dec. 5, 2013. The letter detailing their approval is on file with DEQ.

## Commenters

The table below lists five people and organizations that submitted public comments on the proposed rules by the deadline. Original comments are on file with DEQ.

- |   |                                 |  |
|---|---------------------------------|--|
| 1 | <b>Commenter</b><br>Affiliation | Christine L. Lundberg<br>City of Springfield<br><br>This commenter submitted comments under category 1 in the <i>Summary of comments and DEQ responses</i> section above.                  |
| 2 | <b>Commenter</b><br>Affiliation | Tracy Rutten<br>League of Oregon Cities<br><br>This commenter submitted comments under category 1 in the <i>Summary of comments and DEQ responses</i> section above.                       |
| 3 | <b>Commenter</b><br>Affiliation | Mark Landauer<br>Special Districts Association of Oregon<br><br>This commenter submitted comments under category 1 in the <i>Summary of comments and DEQ responses</i> section above.      |
| 4 | <b>Commenter</b><br>Affiliation | Janet Gillaspie<br>Oregon Association of Clean Water Agencies<br><br>This commenter submitted comments under category 1 in the <i>Summary of comments and DEQ responses</i> section above. |
| 5 | <b>Commenter</b><br>Affiliation | Doug Whitsett<br>Senator for Oregon District 28<br><br>This commenter submitted comments under category 2 in the <i>Summary of comments and DEQ responses</i> section above.               |

## Implementation

### Notification

The proposed rules would become effective Feb. 3, 2014, if adopted by the commission. DEQ will notify:

- Advisory committee members
- Key legislators that were notified during the public notice period
- Interested parties through the same GovDelivery list as used during the public notice period (Clean Water State Revolving Fund and Rulemaking list)
- League of Oregon Cities listserv
- Existing borrowers that are eligible to refinance their existing Clean Water State Revolving Fund loan
- DEQ regional and water quality program staff and regional solutions team
- EPA Region 10

### Systems

- Website – DEQ will update the rulemaking and program websites with all applicable information.



## Five-year review

### Requirement [ORS 183.405](#)

The state Administrative Procedures Act requires DEQ to review new rules within five years of the date EQC adopts the proposed rules. Though the review will align with any changes to the law in the intervening years, DEQ bases its analysis on current law.

### Exemption from five-year rule review

Exemptions from the five-year rule review under ORS 183.405(4) and 183.405 (5) of the Administrative Procedures Act do not apply to these proposed rules.

### Five-year rule review required

No later than Feb. 3, 2019, DEQ will review the newly-adopted rules required under ORS 183.405 (1) to determine whether:

- The rule has had the intended effect.
- The anticipated fiscal impact of the rule was underestimated or overestimated.
- Subsequent changes in the law require that the rule be repealed or amended.
- There is continued need for the rule.

DEQ will use “available information” to comply with the review requirement allowed under ORS 183.405 (2).

DEQ will provide the five-year rule review report to the advisory committee to comply with ORS 183.405 (3).

## **Oregon Department of Environmental Quality**

### **DIVISION 54**

#### **CLEAN WATER STATE REVOLVING FUND PROGRAM**

**340-054-0010**

##### **Definitions**

The following definitions apply to this division of rules:

- (1) “Act” means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, signed into law on February 17, 2009.
- (2) “Applicant” means a public agency that has applied for a CWSRF loan under this division.
- (3) “Borrower” means a public agency that has signed a CWSRF loan agreement with the department.
- (4) “Change order” means a written order and supporting information from a borrower to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.
- (5) “Checklist of application requirements” means a list, provided by the department, of all documents that must be submitted with an application to the department under this division.
- (6) “Clean Water Act” or “CWA” means the federal Water Pollution Control Act, 33 U.S.C. §1251 - §1387.
- (7) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.
- (8) “Collector sewer” means the portion of a public wastewater system installed primarily to receive wastewater directly from individual residences and other individual public or private structures.
- (9) “Construction” means the erection, installation, expansion or improvement of a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes the demolition of an obsolete facility.

(10) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.

(11) “Default” means the failure to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes the filing of bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.

(12) “Department” means the Oregon Department of Environmental Quality.

(13) “Design” means the preparation of engineering drawings and specifications for the proposed construction, and may include pre-design activities.

(14) “EPA” means the U.S. Environmental Protection Agency.

(15) “Estuary management” means the implementation of actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.

(16) “Local community loan” means a loan used by a public agency to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.

(17) “Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.

(18) “Natural infrastructure” means the use of natural form and ecosystem function to restore or augment the intended water quality benefits of a project.

(19) “Nonpoint source” has the meaning given in ORS 468B.005.

(20) “Nonpoint source control” means implementation of a nonpoint source control activity under section 319 of the Clean Water Act and 40 CFR §35.3115(b) that is included in the department’s current Oregon Nonpoint Source Control Program Plan.

(21) “Operation” means the control of wastewater collection system pumping stations and wastewater facility treatment unit processes, the control of equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, and the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these facilities and projects.

(22) Planning.

(a) “Planning” means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for the provision of a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem.

(b) “Planning” does not mean the preparation of detailed bid documents for construction.

(23) “Point source” has the meaning given in ORS 468B.005.

(24) “Principal forgiveness” means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.

(25) “Project” means the activities or tasks identified in a loan application or a loan agreement for which a borrower may expend or obligate funds.

(26) “Public agency” has the meaning given in ORS 468.423.

(27) Replacement.

(a) “Replacement” means expenditures for obtaining and installing equipment, accessories or appurtenances necessary for the ongoing operation during the design or useful life, if longer, of a wastewater or stormwater facility, nonpoint source control or estuary management project to maintain a facility or project for the purpose it was designed and constructed.

(b) “Replacement” does not mean the replacement of a facility or project at the end of its useful life.

(28) “Small community” means a public agency serving a population of 10,000 or less.

(29) “Sponsorship option” means the department’s financing mechanism that allows a public agency with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management activity to be financed through one CWSRF loan.

(30) “Stormwater” means water runoff from a precipitation event, snowmelt runoff, and surface runoff and drainage.

(31) “Sustainability” means the long term reliability and viability of finance, operations, environmental performance or technology, or the use of natural infrastructure.

(32) “Treatment works” has the meaning given in ORS 468.423.

~~(3233)~~ “Wastewater” has the meaning given for “sewage” in ORS 468B.005.

~~(3334)~~ “Wastewater collection system” means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a wastewater treatment facility.

~~(3435)~~ “Wastewater facility” means a wastewater collection system or wastewater treatment facility.

(~~3536~~) “Wastewater reuse” means a project that uses recycled water, as defined in OAR 340-055-0010, or effluent from a commercial or industrial process that is suitable for a direct beneficial purpose or a controlled use.

(~~3637~~) “Wastewater treatment facility” means a publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(~~3738~~) “Water quality standards” means the surface water standards established in OAR 340-041 and the minimum groundwater protection requirements established in OAR 340-040.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

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; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12

### **340-054-0011**

#### **Authorized Fund Uses**

The department will use the CWSRF only to:

(1) Offer loans to eligible borrowers identified in the Intended Use Plan developed pursuant to OAR 340-054-0025.

(2) Fund loan reserves specified in OAR 340-054-0036.

(3) Purchase bonds or acquire other debt obligations- incurred after March 7, 1985 as provided in OAR 340-054-0071.

(4) Pay CWSRF program administration costs to the extent allowed by federal law and state statute.

(5) Earn interest on fund accounts.

(6) Establish reserves for bonds issued by the state for use by the fund.

(7) Pay principal and interest of bond obligations sold to benefit the fund.

Stat. Auth.: ORS 468.020 & ORS 468.440  
Stats. Implemented: ORS 468.423 - ORS 468.440  
Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

## **Purchase and Refinancing of Debt Obligation for Treatment Works**

### **340-054-0071**

#### **Debt Obligation Purchase**

(1) The department may use the CWSRF to buy a public agency's debt obligation for treatment works subject to the following limitations:

(a) The debt was incurred after March 7, 1985.

(b) The debt obligation does not exceed 20 years except for a bond purchase for treatment works as specified in OAR 340-054-0072.

(c) The department will not use the purchase of a debt obligation to refinance a pre-existing CWSRF loan or other debt obligation except as specified in OAR 340-054-0072(5)(b).

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

### **340-054-0072**

#### **Bond Purchase for Treatment Works**

(1) Application requirements. All application requirements for a CWSRF loan as specified in OAR 340-054-0022(1), (2), (3), (5) and (6) apply to a bond purchase for treatment works under this rule.

(2) Intended Use Plan and project priority list. All applications for a bond purchase for treatment works are subject to IUP and project priority list development in the same manner as specified in OAR 340-054-0025.

(3) Project ranking criteria. All applicants for a bond purchase for treatment works will be ranked based on the point sum from the criteria specified in Table 1 under OAR 340-054-0026.

(4) Reserves, CWSRF general fund and project funding. Reserves and CWSRF general funds will be allocated for a bond purchase for treatment works in the same manner as specified in OAR 340-054-0036.

(5) Requirements for a bond purchase for treatment works.

(a) Clean Water Act plans. The department will only purchase a bond for treatment works whose proceeds are used to finance a project that is consistent with plans developed under section 303(e) of the Clean Water Act.

(b) The refunding of an existing CWSRF loan or debt obligation is not an eligible use of the proceeds of a bond purchase for treatment works except as follows:

(A) The following conditions must be met on February 1, 2014:

(i) The public agency's existing CWSRF loan or debt obligation for treatment works is not in default.

(ii) The median household income in the area served by the treatment works of the public agency is less than 70 percent of the statewide median household income.

(iii) The public agency's existing CWSRF loan or debt obligation for treatment works has a remaining term of 10 years or greater.

(iv) The public agency's existing CWSRF loan or debt obligation for treatment works does not include any American Recovery and Reinvestment Act funds or provide for principal forgiveness.

(B) The public agency must:

(i) Submit written confirmation to the department by May 1, 2014 that it intends to refinance its existing CWSRF loan or debt obligation for treatment works with the proceeds of a bond for treatment works issued by the public agency and purchased by the department.

(ii) Complete the issuance and sale of such bond for treatment works by February 1, 2016.

(C) When the department purchases a debt obligation to replace an existing CWSRF loan or debt obligation, the amortization period of the debt obligation purchased by the department may not exceed the lesser of:

(i) The useful life of the asset, or

(ii) Thirty years minus the number of years that the existing CWSRF loan or debt obligation has been in repayment.

(D) The interest rate for the bond for treatment works purchased by the department as described in section (5)(b) of this rule is determined in accordance with section (7)(b) of this rule.

(c) Refinancing an interim loan. A public agency may sell a bond for treatment works to the department to refinance an interim loan or reimburse itself for self-generated funds used to pay department approved project costs for treatment works if the public agency meets the conditions in OAR 340-054-0056(3).



(6) Conditions for bond purchase for treatment works. Conditions for the bond purchase for treatment works are as specified in OAR 340-054-0060.

(7) Bond purchase for treatment works, terms and interest rates.

(a) Bonds for treatment works. A bond for treatment works that is purchased by the department under this rule must be a revenue bond for a term not to exceed 30 years and meet the requirements specified in OAR 340-054-0065(2).

(b) Interest rates. The base rate is as specified in OAR 340-054-0065(4)(b). The department will provide the following interest rates for bond purchase agreements for bonds for treatment works executed on or after February 1, 2014:

(A) 40 percent of the base rate for small communities with less than the statewide median household income.

(B) 55 percent of the base rate plus 0.25 percent for communities other than small communities with less than the statewide median household income.

(C) 55 percent of the base rate plus 0.5 percent for communities with equal to or more than the statewide median household income.

(c) Interest accrual and payment. Interest accrual and payment for a bond for treatment works purchased by the department under this rule is as specified in OAR 340-054-0065(5).

(d) Annual fee. The annual fee on a bond purchase for treatment works is as specified in OAR 340-054-0065(6).

(e) Commencement of bond repayment. A public agency must begin principal and interest repayment for a bond for treatment works purchased by the department under this rule as specified in OAR 340-054-0065(7).

(f) Term. A public agency must fully repay a bond for treatment works purchased by the department under this rule in accordance with a schedule determined by the department. The term of a bond for treatment works purchased by the department under this rule will not exceed 30 years after project completion or the useful life of the asset financed by the bond, whichever is less.

(g) Minor variations in bond terms. The department may, as specified in OAR 340-054-0065(9), authorize minor variations in financial terms of a bond for treatment works purchased under this rule to facilitate administration and repayment of the bond.

(h) Additional subsidization. The department can provide additional subsidization for a bond purchase for treatment works in the same manner as specified in OAR 340-054-0065(11).

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

# **Recommendations on Clean Water State Revolving Fund Rule Amendments for Longer-Term Financing**

**Submitted to: Oregon Environmental Quality Commission**

**By: DEQ Clean Water State Revolving Fund Advisory Committee**

**September 2013**



# CWSRF Advisory Committee Report

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## CWSRF Advisory Committee Report

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Infrastructure Finance Authority  
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Special Districts Association of Oregon  
Central Point

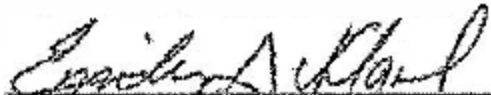
Mr. Doug Waugh  
Financial Services Manager – Water Environment  
Services, Oregon Association of Clean Water  
Agencies, Oregon City

Mr. Joe Whitworth  
President  
The Freshwater Trust  
Portland

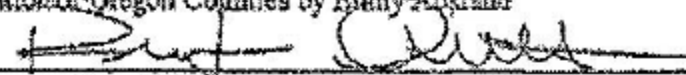
Members are listed by their position with current employer, the organization they represent and employer location.

## CWRF Advisory Committee Report

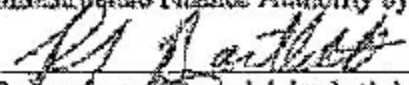
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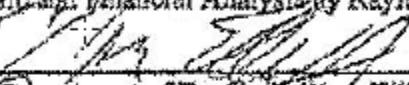
Association of Oregon Counties by Emily A. Clark



Infrastructure Finance Authority by Robert Ault



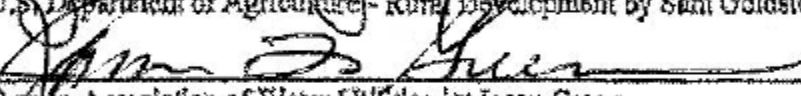
Economic and Financial Analysis by Raymond J. Bartlett



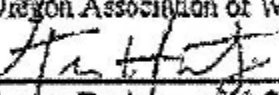
Oregon Department of Energy by Tom Elliott



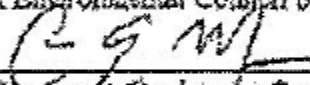
U.S. Department of Agriculture - Rural Development by Sam Goldstein



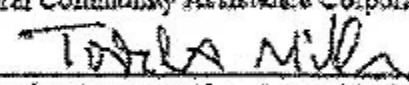
Oregon Association of Water Utilities by Jason Green



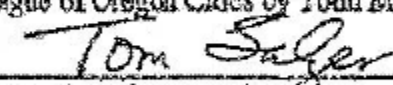
Oregon Environmental Council by Teresa Huntsinger



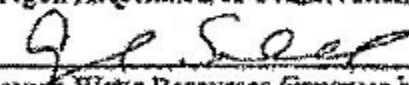
Rural Community Assistance Corporation by Chris Marko



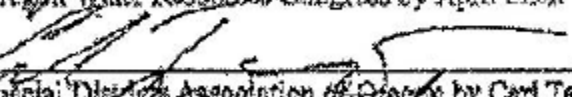
League of Oregon Cities by Todd Miller



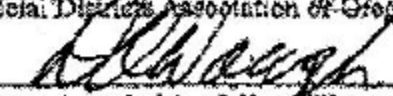
Oregon Association of Conservation Districts by Tom Salzer



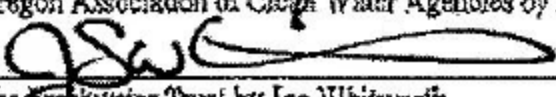
Oregon Water Resources Congress by April Snell



Special District Association of Oregon by Carl Tepper



Oregon Association of Clean Water Agencies by Doug Waugh



The Freshwater Trust by Joe Whitworth

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# Executive Summary

Oregon's Clean Water State Revolving Fund loan program provides low-cost loans to public agencies for funding of water quality pollution prevention and improvement projects including wastewater treatment facility construction and upgrades, stormwater controls, sewer improvements and replacement, irrigation improvements and stream restoration. Since 1990, these DEQ-administered loans have provided more than \$1 billion to 148 Oregon communities for water quality improvement projects. Low-interest rates and loan terms make this program an attractive alternative to borrowing from higher-interest bond markets.

DEQ updated the CWSRF Oregon Administrative Rules in 2012 with input from the CWSRF Advisory Committee. These rules made the CWSRF loan program more affordable to communities by reducing loan interest rates and annual fees and offering incentives for smaller- and lower-income applicants. During the 2012 rulemaking process, the committee identified a debt term up to 30 years as an option to assist future borrowers and make water quality improvements more affordable. Oregon administrative rules currently only allow use of the CWSRF for loans with terms up to 20 years. The federal Clean Water Act and state statute do, however, allow use of the fund for the purchase or refinance of debt obligations in the form of revenue bonds for terms up to 30 years. This option would especially benefit smaller and lower-income communities by spreading the debt repayment over a longer period of time, thereby decreasing the financial burden on residents if utilities are able to mitigate the need for large rate increases. The committee asked DEQ to pursue the longer-term financing option, including review of state statute and identifying how to proceed through the process for obtaining approval by the U.S. Environmental Protection Agency. EPA concurrence is necessary to allow longer-term financing in CWSRF programs.

This report to the Oregon Environmental Quality Commission reflects the CWSRF Advisory Committee's recommendations for implementation of longer-term financing. The committee recommends DEQ amend the CWSRF program rules to allow the longer-term financing option for up to 30 years. The committee did not recommend DEQ include an option of combining the traditional 20-year loan with longer-term financing. EPA has several requirements that DEQ must address to allow longer-term financing and the recommendations reflect these considerations. DEQ will consider this report's recommendations when updating the CWSRF program rules. The following summarizes the committee's recommendations for conditions associated with longer-term financing including: eligibility, interest rates and funding allocation and priorities.

## Eligibility

- All new borrowers should be eligible for longer-term financing.
- Eligibility should be very limited for existing borrowers to refinance their loans. The most disadvantaged communities should be allowed to refinance as specified by economic status and loan characteristic criteria. Refinancing should be a one-time offer and available only for a finite period of time.

## Interest rates

- Interest rate premiums should be added to current base rates to protect the CWSRF fund's perpetuity.
- Premiums should be added in a three-tiered structure based on borrowers' economic status, with the most disadvantaged communities paying the lowest rates and least disadvantaged paying the highest rates. These premium rates should apply to new and eligible existing borrowers, and range from 0 to 0.5 percent.



### **Funding allocation and priorities**

- The amount of CWSRF funds allocated for longer-term financing should not be limited.
- Prioritization should not be considered in allocating the new financing option other than what is stated in current rules.
- Allocation and priority setting for incentives such as the green project and small community reserves and principal forgiveness should not change from current rules.

The committee engaged in facilitated discussions of program issues, specifically focusing on longer-term financing and financial aspects. The members represented their organizations while developing thoughtful solutions they believed were best for Oregon's CWSRF program and water quality protection. Recommendations in this report reflect their expertise and shared vision for the program.

DEQ staff appreciates the members' time and effort in making these recommendations to the Oregon Environmental Quality Commission. Their efforts provide a reasonable, proactive approach to enhance Oregon's CWSRF program that will continue to benefit Oregon communities striving to protect water quality.

# Background

## Program Overview

The Oregon Department of Environmental Quality has administered Oregon's Clean Water State Revolving Fund loan program since 1989. The program is administered under Title VI, State Water Pollution Control Revolving Funds, of the Clean Water Act, and Oregon Revised Statute 468.423 to 468.440. DEQ operates the program under an agreement with the U.S. Environmental Protection Agency, Region 10. The CWSRF program provides low-interest loans to public agencies for the planning, design and construction of various projects that will prevent or mitigate water pollution. Eligible public agencies include federally recognized Indian tribal governments, cities, counties, sanitary districts, soil and water conservation districts, irrigation districts and various special districts, and certain intergovernmental entities.

The Oregon Environmental Quality Commission adopted Oregon Administrative Rules, Chapter 340, Division 54, in March 1989, that establish and prescribe how Oregon's CWSRF program is implemented, including loan and financial requirements. The program continues to evolve and address changing federal regulations, the changing economy and state water quality program priorities. Since 1990, DEQ has loaned more than \$1 billion to assist 148 Oregon communities for water quality improvement projects. This amount includes approximately \$400 million in federal capitalization grants DEQ has received from EPA. To date, 93 percent of funded projects address point source improvements such as wastewater treatment facility upgrades and 7 percent address nonpoint source projects such as stream restoration. DEQ recognizes external needs and the demand to obtain program funds and strives to maintain the program's financial integrity. DEQ administers and implements the CWSRF program to provide funding for projects that achieve water quality protection and restoration benefits while ensuring lending policy protects the program's financial integrity and perpetuity. DEQ last made extensive rule amendments to the program in 2012.

During the 2012 rulemaking process, the CWSRF advisory committee identified the option of offering longer-term financing that was more than 20 years as a way to help make water quality improvement projects more affordable for borrowers and requested DEQ to further examine this. DEQ followed up with the committee's recommendation and determined the CWSRF program administrative rules could be amended to address conditions for how the program will allow longer-term financing for up to 30 years. DEQ convened the committee and asked for their input to make recommendations for longer-term financing conditions including: the maximum allowable term, criteria defining eligibility, interest rates and funding allocation and priorities.

## CWSRF Advisory Committee

The CWSRF Advisory Committee was established in 2011 to address program issues and provide input to DEQ for the 2012 rulemaking. After the committee last met in 2012, DEQ's director appointed a standing CWSRF Advisory Committee which included many of the same individuals as the previous committee and represent CWSRF interests from federal and state agencies, local governments, water and wastewater districts and utilities, watershed organizations, environmental advocacy groups, local conservation districts, and the financial sector. DEQ convened the committee for this rulemaking in early 2013 and met with the committee between June and September 2013 to obtain recommendations on how the CWSRF program should implement longer-term financing. Leah Feldon, manager for DEQ's Office of Compliance and Enforcement, facilitated the meetings.

The primary purpose of the advisory committee meetings was to make CWSRF program rule amendment recommendations for the longer-term financing option to DEQ. In developing these recommendations, the committee considered regulatory, administrative, financial, technical and policy program information.

DEQ program staff presented background information to the committee on specific topics, including examples of how other state CWSRF programs have administered and implemented longer-term financing.

The committee members agreed to conduct themselves according to the CWSRF Advisory Committee Charter and Operating Principles adopted at the July 18, 2013 meeting. The Charter and Operating Principles documented the committee's purpose, structure, participation and responsibilities, as well as procedures by which the committee governed its discussions, deliberations and recommendations. The committee strived to make decisions by consensus, with the understanding that all members agree with the recommendation or decision. Committee members voted on recommendations for rule amendments that are included in this report. There were no significant minority opinions to express in this report. Committee meetings were open to the public and DEQ recorded detailed information on the committee's discussions in meeting summaries. DEQ staff kept committee and rulemaking information up to date on its CWSRF rulemaking web page.

This report to the Oregon Environmental Quality Commission is the CWSRF Advisory Committee's final product and reflects their recommendations on CWSRF program rule amendments. DEQ will consider this report's recommendations when amending the CWSRF program administrative rules.

# Longer-term Financing Rulemaking Issues

DEQ updated Oregon's CWSRF administrative rules in 2012 with input from the CWSRF Advisory Committee. These rules made the CWSRF loan program more affordable to communities by reducing loan interest rates and annual fees and offering incentives for smaller- and lower-income applicants. During the 2012 rulemaking process, the committee identified a debt term up to 30 years as an option to assist future borrowers and make water quality improvements more affordable. The committee asked DEQ to pursue the longer-term financing option, including review of state statute and identifying how to proceed through the process for obtaining EPA approval. Oregon administrative rules currently limit the use of the CWSRF to loans with terms not to exceed 20 years after project completion. However, the federal Clean Water Act and state statute do allow use of the fund for the purchase or refinance of debt obligation for terms up to 30 years.

DEQ asked the committee to provide recommendations on issues associated with longer-term financing including: the maximum allowable term, criteria-defining eligibility, interest rates, and funding allocations and priorities. DEQ staff provided information to the committee about potential demand for and benefits of longer-term financing to existing and new borrowers, including:

- Characteristics of Oregon CWSRF borrowers and loans
- Oregon community demographics
- Impact of longer-term financing on community sewer rates for existing and potential new borrowers
- Other CWSRF state programs that have implemented longer-term financing

Committee members representing infrastructure funding agencies also provided information on their programs and how longer-term financing is administered. Based on the committee's discussion of different eligibility, interest rate and priority-setting criteria, DEQ presented modeling scenarios reflecting the impact of those criteria on the fund's perpetuity.

As the committee discussed these issues, several key themes emerged that informed the overall recommendations:

- Longer-term financing should focus on funding future projects rather than existing projects.
- Criteria and conditions should be simple and consistent with related current rules.
- Smaller and lower-income communities should benefit as much as possible.
- Conditions for longer-term financing should be desirable enough to communities to make it worth their potential extra effort and expense to issue a revenue bond for longer-term financing.
- Recommendations should achieve a balance between ensuring the CWSRF is used to its maximum potential without negatively affecting the fund's perpetuity.
- DEQ should evaluate how effective the amended rules are in meeting the objectives of these recommendations and adjust as needed in the future.

# Recommendations

The federal Clean Water Act and state statute allow the use of the CWSRF for various purposes, including loans with terms not to exceed 20 years after project completion. Current administrative rules only allow use of the fund for loans up to 20 years. The federal Clean Water Act and state statute do allow use of the fund for the purchase or refinance of debt obligations in the form of revenue bonds for terms up to 30 years. The Advisory Committee recommended that rules should be amended to allow the CWSRF to be used for longer-term financing that cannot exceed the lesser of the useful life of the underlying asset or 30 years. Borrowers would have the option between the traditional 20 year loan and the longer-term financing without the option of a combination of the two types of financing. There were discussions about the process for selling a revenue bond and that it may require more effort and upfront costs to communities than is required for a traditional loan. The committee made recommendations on conditions for the new financing option with the intent of making the option as affordable as possible given potential extra upfront costs communities may incur. In general, the committee thought that for some communities, loan terms associated with shorter repayment periods present a hardship for ratepayers. They agreed that an option for longer-term financing would especially benefit smaller and lower-income communities by spreading the loan repayment over a longer period of time, thereby decreasing the financial burden on residents if utilities are able to mitigate the need for large rate increases.

## Eligibility

The committee considered who should be eligible for longer-term financing and focused on existing borrowers and new borrowers. DEQ explained to the committee that EPA concurrence is necessary to allow longer-term financing in CWSRF programs. EPA's approval process could take longer if longer-term financing is made available to communities that are not considered "disadvantaged" by the state ("EPA Extended Term Financing Guidance, based on CWSRF Extended Financing Review Checklist, Oct. 18, 2006). The committee considered information on existing borrowers and all Oregon communities including community size, median household income, and debt burden. This information helped the committee gauge the characteristics of potential new and existing borrowers who might take advantage of the longer-term financing option. DEQ staff also presented information on eligibility criteria used by other states who have implemented longer-term financing.

## Recommendation

The committee recommended the following eligibility criteria and conditions for new and existing borrowers:

- **New borrowers** - There should be no limiting criteria for new borrowers to be eligible for longer-term financing.
- **Existing borrowers** - Longer-term financing for existing borrowers should be allowed only to the most disadvantaged communities as specified by economic status and loan characteristic criteria. Refinancing should be a one-time offer with borrowers having to commit to the refinancing option within 90 days of rule adoption. Borrowers should have two years after their commitment to complete the process of selling DEQ a revenue bond. Existing borrowers that are eligible must meet all the following criteria:
  - Median household income less than 70 percent of the Oregon statewide median household income
  - Loan term remaining is 10 years or greater
  - Loan repayments are currently not in default
  - Loan does not include American Recovery and Reinvestment Act or principal forgiveness funding
  - Total term of the extended loan not to exceed the life of the asset or 30 years, whichever is less

## Issues Addressed

The committee discussed the need to encourage more communities to use the Clean Water State Revolving Fund and believed that allowing another financing option for all new borrowers would encourage more use of the fund. There was concern that the amount of funds available through the CWSRF program could be jeopardized by many large communities taking advantage of longer-term financing and thus decreasing availability of program funds to smaller, lower income communities. The committee acknowledged that current rules do not allow all program funds to be committed to the larger communities, and thus leaving smaller communities at a disadvantage to pursue longer-term financing. The committee also noted that the program should encourage large communities to take advantage of the new option because one of the program goals is to make the CWSRF program more desirable as a funding option for everyone.

The committee also discussed which existing borrowers should be eligible for refinancing existing loans. In general, the committee believed that longer-term financing should only be available to future borrowers, although it thought a few existing borrowers in most need of financial assistance would benefit from this option. The committee considered the administrative burden and long-term financial impacts to DEQ's program if a large group of existing borrowers wanted to pursue this option. It believed it is important to assist communities experiencing economic hardship by offering this option to a certain number of borrowers at a level protective of the fund's long-term financial viability. Based on these considerations and the criteria established in the recommendation, potentially 14 borrowers comprising about 10.5 percent of the fund may be eligible for refinancing.

## Interest Rates

CWSRF loan interest rates are calculated as a percentage of a base rate, which is based on the average national municipal bond rate as published by the Federal Reserve. Different interest rates apply to different types of loans and to loans of differing repayment periods, with smaller disadvantaged communities paying a smaller percent of the base rate. Rates are adjusted quarterly; however, once a loan is signed the interest rate is fixed for the life of the loan. Interest rates are significant in financing affordability and there are no provisions for longer-term financing interest rates in the current rules [OAR 340-054-0065(4)(e)]. EPA concurrence includes a provision that states must charge slightly higher interest rates to offset the longer repayment term in order to protect the perpetuity of the fund. DEQ asked for recommendations from the committee to determine interest premiums for new and existing debt obligations.

## Recommendation

The committee wanted to ensure that disadvantaged borrowers would benefit from longer-term financing. It recommended providing lower interest rate premiums as an incentive to disadvantaged borrowers, and that new and eligible existing borrowers opting for longer-term financing pay interest rate premiums that should be added to current base rates established in the rules. These premiums should be established in a three-tiered structure based on the economic status of borrowers, with the most disadvantaged communities paying the lowest rates and least disadvantaged paying the highest rates:

- No interest premium - small communities with less than statewide median household income
- 0.25 percent premium - communities other than small communities with less than statewide median household income
- 0.5 percent premium - communities with equal to or more than statewide median household income

## Issues Addressed

Key guiding principles for interest rate premium criteria were that the committee wanted to keep the rate structure and premiums simple to understand, affordable to communities, and benefitting the most disadvantaged borrower. The committee agreed that interest rate premiums should protect the fund's

perpetuity but also not deter borrowers from pursuing longer-term financing. The committee stressed that new borrowers need to understand even though interest rates will be higher, smaller incremental repayment amounts could decrease sewer bills and a borrower's financial burden. Affordability of monthly payments and less burdensome utility bills are important driving factors in community decision-making for water quality improvement projects.

Consensus was that a tiered interest rate structure should be established for new borrowers and that eligible existing borrowers should be able to refinance their loans using the same interest rate offered to new borrowers. Offering new rates to eligible existing borrowers might increase affordability of their projects, as in most cases interest rates will be less than their current loan rates. The committee discussed a two-tiered interest rate structure similar to what is currently in OAR 340-054-0065(4)(e) that provides small disadvantaged communities an interest rate less than all other borrowers. However, it decided a three-tiered rate structure that provides lower interest rate premiums to disadvantaged communities based on community size (small and large) would provide better financial assistance to disadvantaged communities. This structure assists the most disadvantaged borrowers by applying no premium to small communities with less than statewide median household income, a minimal premium amount to other communities with less than statewide median household income and a larger premium to all other communities. The committee decided a flat-rate premium (versus a percent of the base rate premium) was easy to implement and understand, and was most protective of the fund's long-term perpetuity.

## Funding Allocation and Priorities

Oregon Administrative Rules 340-054-0036(1) require reserves, or set-asides, from available CWSRF funds for specific purposes including small community, planning and "green" projects. Federal regulations require states to allocate a certain amount of their annual capitalization grant to "green" projects and provide additional subsidization which is defined in OAR 340-054-0065(11). OAR 340-054-0036(2) requires funding increases to existing loans before funding new projects that are ready to proceed according to the project priority list. Currently there are no provisions allocating funds for a longer-term financing reserve or establishing priority funding for longer-term financing. DEQ asked the committee to make recommendations about the reserves and allocations, reallocation and current priorities for longer-term financing allocation.

### Recommendation

The committee made the following recommendations:

- The amount of CWSRF funds allocated for longer-term financing should not be limited.
- Prioritization should not be considered in allocating the new financing option other than what is stated in current rules.
- Allocation and priority setting for incentives such as the green project and small community reserves and principal forgiveness should not change from current rules.

### Issues Addressed

The committee discussed how it wanted the Clean Water State Revolving Fund to be used to its highest potential in a balanced manner. Modeling demonstrated that if all future borrowers pursued longer-term financing without limitations, the fund's perpetuity was still protected. The committee wanted to ensure longer-term financing would provide a financial benefit to smaller disadvantaged communities. There was concern that many large, higher-income communities would take advantage of longer-term financing and the fund availability would decrease to smaller, lower-income communities in the most need of financial assistance. The committee acknowledged that based on the current rules it is unlikely that funds available would all be allocated to larger, higher-income communities. The rules limit the amount of the total fund allocated to one borrower and also establish a small community reserve and project ranking criteria for small communities. DEQ awards principal forgiveness on a priority basis to small communities first.

# Impact of Recommendations on Program

Offering longer-term financing to all new borrowers and a few eligible existing borrowers will make the Clean Water State Revolving Fund more attractive to borrowers thus potentially increasing the number of applications DEQ will receive for funding. DEQ may incur some additional staff time to administer the longer-term financing process, although the CWSRF program's revenue and expenses for administration should not be affected.

Reduced repayment amounts associated with longer-term financing and reduced interest rates in the case of refinancing will have an impact on the amount of program funds available in the future. To offset the impact of longer-term financing on the fund's perpetuity, premiums should be added to interest rates in effect at the time of signing a new debt agreement or refinancing an existing loan. The three-tiered interest rate structure will still make longer-term financing desirable to communities. Assuming all future borrowers opt for longer-term financing and potentially eligible existing borrowers refinance their existing loans, the projected percent difference in binding commitments over a 60-year modeled period represents only a 7 percent decrease. EPA has determined that 10 percent is the threshold to ensure perpetuity of the fund.



# Conclusion

The committee thoroughly discussed the policy and financial aspects of longer-term financing and the impacts this would have on borrowers and DEQ's CWSRF program. The members reviewed and analyzed information DEQ presented to them. They respected different viewpoints and developed solutions that were best for the viability and perpetuity of the program. Members made thoughtful, meaningful and implementable recommendations to the Oregon Environmental Quality Commission. The recommendations in this report reflect their expertise and shared vision for the program.