

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

340-054-0005

Purpose

- (1) These rules, OAR 340-054-0005 to 340-054-0108, establish procedures and requirements for the Department will follow to make funding of projects and activities that enhance, protect or restore water quality through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund (CWSRF), available to public agencies to plan, design and construct sewage facilities, nonpoint source control and estuary management projects.
- (2) The purpose of this division is to ~~These rules are intended to do the following:~~
- (a) Provide loans to projects ~~Assist a public agency to obtain financing for a project~~ that enhances, or protects or restores water quality.;
- (b) Ensure the loan application and funding processes, procedures and requirements are clear ~~that loans are made to public agencies capable of repaying such loans;~~
- (c) Establish an ~~Promote loan affordability by offering below-market~~ interest rates below market rate so that the loans are affordable;
- (d) Ensure perpetuity of the CWSRF for reliability of project funding ~~Provide loans to communities of all sizes needing to finance projects; and~~
- (e) Specify the types of projects for which loans may be made.

Stat. Auth.: ORS 468.020 and ORS 468.440

Stats. Implemented: ORS 468.423 to ORS 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

340-054-0010

Definitions

The following definitions apply to this division of rules ~~unless a different meaning is required by context:~~

- (1) "Act ~~Allocation Cycle"~~ means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, signed into law on February 17, 2009 ~~funding cycle as determined by the Department.~~
- (2) "Applicant" means a public agency that has applied for a an eligible Clean Water State Revolving Fund (CWSRF) applicant loan under this division.
- (3) "Available CWSRF" means the amount in the Clean Water State Revolving Fund minus monies for the Clean Water State Revolving Fund administration and prior obligations.
- (34) "Borrower" means a public agency that has signed a CWSRF loan agreement with the department ~~recipient.~~

(45) "Change Order" means a written order and supporting information from ~~the a Borrower~~ to ~~the 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.

(56) "Checklist of ~~Exhibits and application R~~ requirements" means ~~the most recent version of the a~~ list, provided by the department, of all ~~the exhibits and required~~ documents that must be submitted with an application to the department under this division, in conjunction with the CWSRF application and then be reviewed and approved by the Department ~~before a loan agreement is executed~~.

(67) "Clean Water Act" or "CWA" means the federal ~~Clean~~ Water Pollution Control Act, 33 U.S.C. §1251 - §1387.

(78) "Clean Water State Revolving Fund" or "CWSRF" means the Water Pollution Control Revolving Fund established under ORS 468.427.

(89) "Collector ~~S~~ewer" means ~~that the~~ portion of ~~the a~~ public ~~sewerage wastewater~~ system ~~that is~~ installed primarily to receive wastewater directly from individual residences and other individual public or private structures.

~~(10) "Combined Sewer" means a sewer that is designed as both a sanitary and a storm water sewer.~~

~~(11) "Comprehensive Conservation Management Plan" (CCMP) means a plan developed for a designated National Estuary, pursuant to 33 USC § 1330 of the Clean Water Act.~~

~~(912) "Construction" means the erection, installation, expansion or improvement of a wastewater or stormwater facility sewage facilities, nonpoint source control activity and/or estuary management project, s. 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.~~

~~(113) "Default" means nonpayment by the Borrower of the failure to pay principal, or interest or annual fees, amount of a CWSRF loan on the payment's due date, failure to or to comply with the other CWSRF loan terms or conditions provisions of the CWSRF loan, a formal and includes the filing of bankruptcy filing or other written admission of an inability to pay satisfy a borrower's CWSRF obligations under a CWSRF loan.~~

(124) "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.~~

~~(15) "Director" means the Director of the Oregon Department of Environmental Quality.~~

~~(16) "Documented Health Hazard" means an area wide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment as demonstrated by sanitary surveys or other data collection methods and confirmed by the Oregon Office of Public Health Services, within the Department of Human Services pursuant to ORS 222.850 to 222.915, or 431.705 to 431.760, by the Department pursuant to OAR 340-071-0130(3), by either agency pursuant to OAR 660-011-0060, or by county health officials pursuant to applicable local ordinances.~~

~~(17) "Documented Water Quality Problem" means a violation of statutes, rules or permit conditions or an exceedance of water quality standards documented by data and confirmed by the Department.~~

~~(18) "Emergency Conditions" means conditions caused by fire, flood, storm, earthquake, vandalism, sabotage or other events that could not have been reasonably foreseen or prevented that require immediate repairs to a sewage facility to prevent significant environmental degradation or a threat to public health.~~

(149) "EPA" means the U.S. Environmental Protection Agency.

~~(1520)~~ "Estuary ~~M~~management" means the implementation of actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.

~~(21)~~ "Federal Capitalization Grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds appropriated by U. S. Congress for the State Revolving Fund under Title VI of the Clean Water Act.

~~(22)~~ "Ground Water Management Area" means an area in which contaminants in the groundwater have exceeded the levels established under ORS 468B.165 and the affected area is subject to a declaration under ORS 468B.180.

~~(23)~~ "Implementing Partner" means any individual or organization that has entered into a contract with a public agency to implement a water resource activity within the sponsorship option of a construction loan.

~~(24)~~ "Infiltration" means the intrusion of groundwater into a collector sewer or interceptor sewer.

~~(25)~~ "Inflow" means a direct flow of water other than wastewater or groundwater into a collector sewer or interceptor sewer.

~~(26)~~ "Initiation of Operation" means the date that a facility funded by a CWSRF loan is operationally complete and ready for the purposes for which it was planned, designed and built.

~~(27)~~ "Intended Use Plan (IUP)" means a document submitted at least annually by the Department to the EPA identifying proposed uses of the CWSRF.

~~(28)~~ "Interceptor Sewer" means a sewer primarily intended to receive wastewater from collector sewers or other interceptor sewers.

~~(1629)~~ "Local ~~C~~ommunity ~~L~~oan" means a loan ~~to be used by~~ a public agency ~~that will then be used by the public agency~~ to establish a local financial program that will fund an eligible nonpoint source control or to address estuary management activity efforts or nonpoint source control activities.

~~(1730)~~ "Maintenance" means regularly scheduled work ~~that is~~ performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a sewage wastewater or stormwater facility, nonpoint source control or estuary management project.

~~(31)~~ "Major Sewer Replacement and Rehabilitation" means the repair or replacement of interceptor or collector sewers.

~~(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.

~~(2032)~~ "Nonpoint ~~S~~ource ~~C~~ontrol" means ~~the~~ implementation of a nonpoint source pollution management control activity under section 319 of the Clean Water Act and 40 CFR §-35.3115(b) ~~and that is~~ included in the department's current most recent edition of the Oregon Nonpoint Source Control Program Plan.

~~(33)~~ "Nonpoint Source" means ~~diffuse or unconfined sources of pollution where wastes can either enter into or be conveyed by the movement of water to public waters, including individual on-site sewage disposal systems and any other source of pollution of waters of the state not subject to regulation under ORS 468B.050.~~

~~(34)~~ "On-site system" has the meaning given in OAR 340-071-0100(90).

~~(2135)~~ "Operation" means the control of sewage wastewater collection system pumping stations and wastewater facility treatment unit processes, ~~within a sewage facility. Operation also means~~ the control of equipment and processes of stormwater facilities, nonpoint source control and estuary management projects, ~~and. Furthermore,~~

~~operation means~~ the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these ~~same~~ facilities and projects.

~~(36) "Operation and Maintenance Manual" means a procedural and guidance document for operating and maintaining a sewage collection system or sewage treatment facility as required by OAR chapter 340, division 052.~~

~~(37) "Persistent Bioaccumulative Toxics" means mercury, PCBs, dioxins, furans, benzo(a) pyrene, aldrin, dieldrin, chlordane, DDT, DDE, DDD, hexachlorobenzene, mirex or toxaphene.~~

~~(2238) 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 sewage-a wastewater or stormwater facility~~facilities, nonpoint source control ~~and/or~~ estuary management projects ~~intended to remediate an existing or anticipated water pollution problem.~~

~~(b) "Planning" does not mean, but excluding~~ the preparation of detailed bid documents for construction.

~~(2339) "Point Source" has the meaning given in ORS 468B.005, means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.~~

~~(2440) "Principal Forgiveness" means additional subsidization that allows a borrower to repay only a specified portion of the loan principal.~~

~~(41) "Proactive Proposals" means a proposed project that does not address ongoing violations of effluent limits in permits, water quality standards in OAR chapter 340, division 41, or unpermitted discharges.~~

~~(2542) "Project" means the activities or tasks identified in the loan application or the loan agreement for which the Borrower may expend or obligate funds.~~

~~(26) "Public agency" has the meaning given in ORS 468.423.~~

~~(2743) 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 sewage-wastewater or stormwater facility, nonpoint source control or estuary management project to maintain the a facility or project for the purpose for which it was designed and constructed.~~

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

~~(44) "Reserve Capacity" means that portion of the sewage collection system or sewage treatment facility that was incorporated into the design to handle future increases in sewage flows and loading. Reserve capacity must have been identified at the time of design and must be based on demand generated from future development that is consistent with acknowledged local comprehensive plans and land use regulations.~~

~~(45) "Security Measure" means the evaluation, planning, design, purchase and installation of equipment and facilities intended to prevent unauthorized physical and electronic intrusion into, or willful damage of, sewage facilities, nonpoint source control or estuary management projects.~~

~~(46) "Sewage 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 sewage treatment facility.~~

~~(47) "Sewage Facility" means a sewage collection system or sewage treatment facility.~~

~~(48) "Sewage Treatment Facility" means any publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.~~

~~(2849) "Small Community" means a public agency serving a population of 510,000 or less.~~

~~(50) "Special Status Water Body" means the following water bodies of the state: federally designated Wild and Scenic Rivers, State Scenic Waterways, federally designated Sole Source Aquifers, the federally designated Lower Columbia River and Tillamook Bay estuaries, the Clackamas, North Santiam and McKenzie River sub-basins of the Three-Basin Rule (OAR 340-041-0470) and locally designated "significant" water bodies or wetlands as related to the Department of Land Conservation and Development Goal 5.~~

~~(51) "Sponsoring Community" means a public agency with the authority to finance and implement both a sewage facility project and water resource activity through the sponsorship option of a construction loan.~~

~~(2952) "Sponsorship Option" means the Department's financing mechanism that allows a public agency's sewage collection system or sewage treatment with the authority to finance and implement a wastewater facility project and an eligible nonpoint source control or estuary management a qualifying water resource activity to be financed through a single one CWSRF loan. The Department, as an incentive to the public agency (referred to in OAR 340-054-0024(3) as a sponsoring community), discounts the interest rate on the resulting loan. The intention of this type of financing is to provide restoration or protection to a local water resource in conjunction with a traditional project without significantly increasing utility rates.~~

~~(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.~~

~~(53) "Storm water" means water derived from rainfall, snowmelt or other storm events that flows across the ground's surface rather than infiltrating the ground.~~

~~(54) "Surface Water" means streams, lakes, reservoirs, estuaries and the topographical features that define their volume.~~

~~(55) "Urgent Repair" means the immediate stabilization of equipment and facilities pertaining to a sewage collection system or sewage treatment facility that have failed unexpectedly or are in imminent threat of failure as the result of age or wear, and the failure poses an immediate and significant threat to environmental quality or public health.~~

~~(56) "Value Engineering" means a specialized cost control technique specifically applicable to the design of sewage treatment facilities that identifies cost savings that can be made without sacrificing the reliability or efficiency of the project.~~

~~(3257) "Wastewater" has the meaning given for "sewage" in ORS 468B.005. means waters carrying wastes from individual public or private structures combined with infiltration and inflow.~~

~~(33) "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.~~

~~(34) "Wastewater facility" means a wastewater collection system or wastewater treatment facility.~~

~~(3558) "Wastewater Reuse" means a project that reuses recycled water, as defined in OAR 340-055-0010, or treated effluent from a sewage treatment system, commercial, or industrial process and, as a result of treatment, that is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.~~

~~(36) "Wastewater treatment facility" means a publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.~~

~~(59) "Water Pollution Control Revolving Fund" means the "CWSRF".~~

~~(3760) "Water Qquality Sstandards" means the surface water standards established in OAR ~~chapter 340, division 0~~ 41 ~~for surface waters~~ and the minimum groundwater protection requirements established in OAR ~~chapter 340, division 040 for groundwater~~.~~

~~(61) "Water Resource Activity" means a nonpoint source control or an estuary management activity funded through the sponsorship option in OAR 340-054-0024(3). These activities include the protecting or restoring of riparian habitat to prevent loss of biological diversity or ecological health, establishing conservation easements, acquiring riparian lands or wetlands and other activities.~~

~~(62) "Waters of the State" means the same as defined in ORS 468B.005(8).~~

~~(63) "Wellhead Protection Area" has the meaning provided in OAR 340-040-0150(13).~~

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

Stat. Auth.: ORS 468.020 and ORS 468.423—468.440

Stats. Implemented: ORS 468.423 to ORS 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

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.

(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 and ORS 468.440

Stats. Implemented: ORS 468.423 to ORS 468.440

340-054-0015

Eligible Projects and Activities

-Eligibility

~~(1)~~ A public agency may apply for a CWSRF loan ~~for up to 100% percent of the~~ water quality project and project related costs including, but not limited to, of the following types of projects and project related costs:

~~(1a)~~ Planning for sewage-wastewater facilities, nonpoint source control or estuary management projects including supplements or updates.;

~~(2b)~~ Secondary sewage-Wastewater treatment facilities.;

~~(c)~~ Advanced sewage treatment facilities, if required to comply with Department water quality statutes and rules;

~~(3d)~~ Reserve capacity for a sewage-wastewater treatment or disposal facility that serves a population not to exceed a 20-year population projection, and for a sewage-wastewater collection system, or any portion thereof, not to exceed a 50-year population projection.;

~~(4e)~~ Facilities related to biosolids/solids treatment, disposal, resource recovery, or and management.;

~~(5f)~~ Interceptors, force mains and pumping stations.;

~~(6g)~~ Identification and correction of the intrusion of groundwater into a collector sewer or interceptor sewer (infiltration) and the direct flow of water other than wastewater or groundwater into a collector or interceptor sewer (inflow).;

~~(7h)~~ Major sewer-r Replacement or repair of interceptor or collector sewers and rehabilitation necessary to maintain the structural integrity and function of the sewer.;

~~(8i)~~ Combined sewer-o verflow correction of a sewer designed as both a sanitary and stormwater sewer (combined sewer), if required to protect sensitive estuarine waters or to comply with D epartment water quality statutes, rules or permits, provided the project is the most cost effective alternative.;

~~(9j)~~ New collector sewers required to alleviate/correct documented water quality problems/violations of state statutes, administrative rules or permit conditions or to serve an area with a documented health hazard due to failing onsite wastewater treatment systems or other wastewater disposal practices resulting in discharge of inadequately treated wastes.;

~~(10k)~~ Storm-water control facilities, systems or projects, including, but not limited to, engineered or natural facilities to treat, convey or control stormwater discharge, and source controls intended to improve water quality or reduce stormwater volume, reduce infiltration or inflow to a sanitary sewer system.

~~(l)~~ Storm-water management measures identified in Oregon's Nonpoint Source Control Program Plan that address environmental quality directly related to water quality.

~~(11m)~~ Estuary management efforts/activities that address environmental quality directly related to water quality.

~~(12n)~~ Nonpoint source control activities that address environmental quality directly related to water quality.

~~(o)~~ Funding of local community loans through public agencies to address nonpoint source control activities or estuary management efforts.

~~(13p)~~ Wastewater reuse projects.

~~(2)~~ Conditions on the use of CWSRF loan proceeds.

~~(a)~~ Projects funded in whole or in part from by the CWSRF loan program must be consistent with plans developed under sections 208, 303(e), 319 and 320 of the Clean Water Act.

~~(b) Loans may be used only for projects on the project priority list, described in OAR 340-054-0025(4).~~

~~(c) CWSRF loans will not be used for refinancing long-term loans.~~

~~(d) The CWSRF loans may be used to refinance interim loans or self-generated funds used to pay Department approved project costs if the public agency satisfies the following conditions:~~

~~(A) Provides the Department with a written notice of the intent to apply for long-term financing;~~

~~(B) Is willing to proceed with the project using interim loans or self-generated funds; or~~

~~(C) Agrees to proceed at its own risk without regard to whether CWSRF financing is ultimately available to provide the long-term financing.~~

~~(e) The Applicant must agree to comply with project review and approval requirements established in OAR chapter 340, division 052; Department permit requirements as established in OAR chapter 340, division 045; and requirements of Title VI of the Clean Water Act, as applicable.~~

~~(3) Short-term, Construction Financing Exception. Notwithstanding other provisions of this rule, short-term, construction period financing may be provided to qualified projects if all of the following conditions are met:~~

~~(a) Liquidity of the CWSRF Fund is sufficient to provide the financing without adversely affecting the amount and timing of disbursements needed by prior obligations;~~

~~(b) The Borrower has a legally enforceable obligation for long-term financing of the project satisfactory to the Department; and~~

~~(c) The loan agreement for interim financing will stipulate that the Department is not obligated to provide long-term financing for this project.~~

Stat. Auth.: ~~ORS 468.020 and~~ ORS 468.423 ~~—~~ ORS 468.440

Stats. Implemented: ORS 468.423 ~~-to~~ ORS 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

340-054-0020

Uses of the Fund

The CWSRF may be used only for the following purposes:

~~(1) To make loans, fund reserves for CWSRF loans, purchase bonds or acquire other debt obligations.~~

~~(2) To pay CWSRF program administration costs to the extent allowed by federal law.~~

~~(3) To earn interest on fund accounts.~~

~~(4) To establish reserves for bonds issued by the state for use by the fund.~~

~~(5) To pay principal and interest of bond obligations sold to benefit the fund.~~

Stat. Auth.: ~~ORS 468.423 —~~ ORS 468.440

Stats. Implemented: ORS 468.429 & ORS 468.431

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

340-054-0021

Expedited Loans

~~The Department will administer two categories of expedited loans: emergency loans and urgent repair loans.~~

~~(1) General Requirements and Provisions.~~

~~(a) Applications will be accepted by the Department at any time.~~

~~(b) All applicants for expedited loans must submit:~~

~~(A) A completed application on a form provided by the Department;~~

~~(B) Evidence that the Applicant has authority to undertake the project;~~

~~(C) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion);~~

~~(D) A Land Use Compatibility Statement (LUCS) in accordance with OAR 340-018-0030(5); and~~

~~(E) Any other information requested by the Department.~~

~~(c) The requirements of OAR 340-054-0065 are applicable to expedited loans except as specifically modified in this rule.~~

~~(d) Facilities subject to design review under OAR chapter 340, division 052 are not exempted from such review by this rule.~~

~~(2) Emergency Loans. The Department will administer loans for the remediation of emergency conditions. This loan is intended for the immediate stabilization of damages resulting from unforeseen emergency conditions.~~

~~(a) In addition to the requirements in section (1) of this rule, applications for emergency loans must include:~~

~~(A) A letter from a professional engineer or other appropriately qualified individual summarizing the nature of the emergency, the proposed remediation and estimated project cost; and~~

~~(B) A letter from the Water Quality Manager of the appropriate Department regional office corroborating the emergency condition and concurring with the appropriateness of the proposed project and the estimated cost.~~

~~(b) Emergency loans have the following terms and conditions:~~

~~(A) Maximum loan amounts must be in accordance with OAR 340-054-0025(6)(c)(A);~~

~~(B) The interest rate and corresponding loan terms must be in accordance with OAR 340-054-0065(5)(f);~~

~~(C) Construction contracts funded through this loan must be awarded to a contractor(s) within 12 months of the loan agreement execution unless the Department expressly exempts the loan from this requirement;~~

~~(D) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9); and~~

~~(E) The annual loan fee will be imposed in accordance with OAR 340-054-0065(7).~~

~~(c) The Department may consider requests for emergency loans in excess of the maximum loan amount defined in OAR 340-054-0025(6)(c)(A) for funding, or refer them to a CWSRF construction loan for additional funding.~~

~~(3) Urgent Repair Loans. The Department will administer loans for the urgent repair of sewage collection systems or sewage treatment facilities.~~

~~(a) In addition to the requirements in section (1) of this rule, applications for urgent repair loans must include:~~

~~(A) A letter from a professional engineer or other appropriately qualified individual documenting the need for the urgent repair, the proposed repair and estimated project cost; and~~

~~(B) A letter from the Water Quality Manager of the appropriate Department regional office corroborating the urgent need for repair and concurring in the appropriateness of the proposed project and the estimated cost.~~

~~(b) Urgent repair loans have the following terms and conditions:~~

~~(A) Maximum loan amount must be in accordance with OAR 340-054-0025(6)(c)(A);~~

~~(B) The maximum loan term must be in accordance with OAR 340-054-0065(10)(c);~~

~~(C) Construction contracts funded by this loan must be awarded to a contractor(s) within 12 months of the execution of the loan agreement;~~

~~(D) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9);~~

~~(E) The annual loan fee will be imposed in accordance with OAR 340-054-0065(7); and~~

~~(F) The interest rate must be the base rate as established in OAR 340-054-0065(5)(d).~~

~~Stat. Auth.: ORS 468.423 – ORS 468.440~~

~~Stats. Implemented: ORS 468.429 & ORS 468.439~~

~~Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03~~

340-054-0022

Local Community Loans Application Requirements

~~The Department will administer local community loans with public agencies for the financing of estuary management efforts and nonpoint source control activities. Applications may be submitted in response to the Department's annual solicitation or at anytime during the program year.~~

~~(1) Application submittal. The department will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible public agency may submit to the department a CWSRF loan application at any time. General Requirements and Provisions. Applicants applying for CWSRF financing for local community loans must submit:~~

~~(2) Consideration for funding. The department will consider an applicant for funding only if its project is included in the Intended Use Plan and all application requirements in this division are met.~~

~~(3) All CWSRF loans. An applicant must submit the following to the department:~~

~~(a) A fully executed and complete application on the applicable form provided by the Department;~~

~~(b) A project narrative, as defined by the Department, describing how the project will implement an estuary management effort or a nonpoint source control activity;~~

~~(be) A completed Documents specified in the Checklist of application Exhibits and Requirements provided by the department and associated documents;~~

~~(cd) Audited financial statements for the previous three years prior to the application date and the Applicant's current budget, (unless waived in writing by the Department, in its discretion);~~

~~(e) A Land Use Compatibility Statement (LUCS) in accordance with OAR 340-018-0030(5);~~

~~(df) Evidence that the Applicant has the authority to undertake the project; including, but not limited to, evidence of a loan approval resolution or similar authorization for signing a loan agreement and establishing a loan reserve account.~~

~~(g) A projected program cash flow based on the anticipated number of local loans, their repayment schedule, the amount and timing of Department disbursements and the amount and timing of repayments to the Department; and~~

~~(e) Evidence the applicant has authority to collect and pledge the revenue offered as repayment for a CWSRF loan, repay a loan and, where applicable, the ability to ensure ongoing operation and maintenance of the proposed wastewater or stormwater facility, nonpoint source control or estuary management project. The department may require the following criteria to be met for a revenue-secured loan described under OAR 340-054-0065(2):~~

~~(A) An applicant's revenue stream is not at risk from undue dependence upon a limited portion of the system's customer base or a pattern of delinquent payment from that portion of the system's customer base, and~~

~~(B) An applicant must have the ability to collect from delinquent customers.~~

~~(f) Pre-award compliance review report or other evidence as determined by the department to show compliance with federal nondiscrimination requirements.~~

~~(g) For projects serving two or more public agencies, the executed inter-agency agreements, contracts or other legally binding instruments necessary for financing, construction and operation of the proposed project. The documents must be satisfactory to the department for determining an adequate pledge of security.~~

~~(h) Evidence of resolution, ordinance or other authorization approving bonds secured by sewer or other revenue sources if required by the department.~~

~~(i) Official statement of recently issued bonds if required by the department.~~

~~(jh) Any other information requested by the Department as necessary to complete the loan application.~~

~~(4) Local community loan. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF local community loan must submit the following to the department:~~

~~(a) A description of how the project will implement a nonpoint source control activity or estuary management effort.~~

~~(b) A projected cash flow statement based on anticipated number of local loans, their repayment schedule, amount and timing of department disbursement and amount and timing of repayments to the department.~~

~~(c) Unless waived by the department, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.~~

~~(d) Unless waived by the department, demonstration of compliance with applicable federal environmental cross-cutting authorities.~~

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) In accordance with OAR 340-052, department approved plans and specifications for the project as applicable.

(g) An environmental determination obtained from the department for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support the department's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(h) If an applicant does not obtain an environmental determination as specified in subsection (4)(g) of this section, an applicant may submit to the department, and the department may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that accepted by the other agency.

(B) The other agency's determination must have been made within the previous five years.

(C) The federal environmental cross-cutting authorities have been met and documented.

(5) All design or construction loans. In addition to the requirements in section (3) of this rule, an applicant applying for a CWSRF design or construction loan must submit the following to the department:

(a) Unless waived by the department, evidence of a user charge system or other source of revenue if the applicant will be securing and repaying the loan with sewer system revenues.

(b) Unless waived by the department, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from the department for a construction project of a treatment works as defined in the CWA § 212, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support the department's review of the entire projects' potential environmental impacts and include an analysis of a no action alternative and other reasonable alternatives considered.

(B) Project construction must begin within five years of the environmental determination.

(d) If an applicant does not obtain an environmental determination as specified in subsection (5)(c) of this section, an applicant may submit to the department, and the department may accept, an environmental determination made by another agency that meets the following conditions:

(A) The project scope must be essentially unchanged from that accepted by the other agency.

(B) The other agency's determination must have been made within the previous five years.

(C) The federal environmental cross-cutting authorities have been met and documented.

(e) Documentation that demonstrates compliance with the land use requirements in OAR 340-018-0050.

(f) In accordance with OAR 340-052 and for a construction-only loan, department approved plans and specifications for the project as applicable.

(g) If the estimated cost of a project is in excess of \$10 million, a value engineering study satisfactory to the department, prior to construction beginning. The study must be a specialized cost control technique specifically applicable to the wastewater treatment facility design identifying cost savings that can be made without sacrificing project reliability or efficiency.

(6) Design or construction loan for a point source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a point source project must submit the following to the department:

(a) An engineered planning document in the form of either a facility plan or project pre-design report that provides a comprehensive evaluation of environmental factors, engineering alternatives and financial considerations affecting the project area. This document must adequately describe the effectiveness and suitability of the proposed project to address the identified water quality problem. An applicant must have this document reviewed and approved by the department prior to signing a design or construction loan.

(b) Evidence of a sewer use ordinance or equivalent authority that prohibits:

(A) New connections from inflow sources into the wastewater collection system, and

(B) Wastewater introduced into the wastewater collection system containing toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety, adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.

(c) When a public agency applies for a wastewater facility construction loan that includes a sponsorship option, complete information about the nonpoint source control or estuary management activity on the applicable application form. The department will only consider a sponsorship option if a nonpoint source control or estuary management activity is included as part of the entire project scope.

(7) Design or construction loan for a nonpoint source project. In addition to the requirements in sections (3) and (5) of this rule, an applicant applying for a CWSRF design or construction loan for a nonpoint source project must submit to the department an engineered planning report. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

~~(2) Terms and Conditions. Local community loans have the following terms and conditions:~~

~~(a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);~~

~~(b) The maximum loan term must be in accordance with OAR 340-054-0065(10)(b);~~

~~(c) The interest rate must be as indicated in OAR 340-054-0065(5)(c);~~

~~(d) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9); and~~

~~(e) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).~~

Stat. Auth.: ~~ORS 468.020 and ORS 468.423~~—ORS 468.440

Stats. Implemented: ORS 468.423~~9~~ & to ORS 468.440~~39~~

Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03

340-054-0023

Planning Loans

~~The Department will administer loans for planning. The Department will administer loans for activities that result in a written plan to upgrade a facility to address an existing or anticipated water pollution problem.~~

~~(1) General Requirements and Provisions. All applicants for planning loans must submit:~~

~~(a) A completed planning loan application using a form provided by the Department;~~

~~(b) Evidence that the Applicant has authority to undertake the project;~~

~~(c) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion); and~~

~~(d) Any other information requested by the Department.~~

~~(2) Terms and conditions. Planning loans have the following terms and conditions:~~

~~(a) The maximum loan amount will be determined by the Department, but may not exceed funds available in the reserve as per OAR 340-054-0025(6)(c)(C);~~

~~(b) The maximum loan term must be in accordance with OAR 340-054-0065(10)(a);~~

~~(c) The loan repayment period (as defined in the loan agreement) will begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9);~~

~~(d) The interest rate for planning loans must be in accordance with OAR 340-054-0065(5)(b); and~~

~~(e) Planning loans are exempt from the annual loan fee described in OAR 340-054-0065(7).~~

~~Stat. Auth.: ORS 468.423 - ORS 468.440~~

~~Stats. Implemented: ORS 468.429 & ORS 468.439~~

~~Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03~~

340-054-0024

Design Loans and Construction Loans

~~The Department will administer design loans or construction loans to address point source or nonpoint source pollution. Applications may be submitted in response to the Department's annual solicitation or at anytime during the program year. The Department may require different application forms for point source projects and nonpoint source projects.~~

~~(1) General Requirements and Provisions. Applicants applying for CWSRF financing for design loans or construction loans must submit:~~

~~(a) A fully executed and complete application on a form provided by the Department;~~

~~(b) A completed Checklist of Exhibits and Requirements and associated documents;~~

~~(c) Evidence that the Applicant has the authority to undertake the project;~~

~~(d) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion);~~

~~(e) All pertinent requirements listed in OAR 340-054-0035; and~~

~~(f) Any other information requested by the Department.~~

~~(2) Design Loans or Construction Loans. The Department will administer loans for activities that result in the design or construction of sewage facilities, nonpoint source control or estuary management projects. When approved by the Department, security measures intended to prevent intrusion or damage to such facilities or projects, or interruption of a facility or project's processes are eligible design or construction costs. Design loans or construction loans have the following terms and conditions:~~

~~(a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);~~

~~(b) If not implementing a sponsorship option, the interest rate and corresponding loan terms for design or construction loans must be in accordance with OAR 340-054-0065(5)(f), or 340-054-0065(5)(g).~~

~~(c) The loan repayment period (as defined in the loan agreement) must begin on the outstanding principal and interest balance in accordance with OAR 340-054-0065(9); and~~

~~(d) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).~~

~~(3) Sponsorship Option for protection or restoration of water resources.~~

~~(a) A public agency (sponsoring community) may apply to the Department for a CWSRF loan to finance a sewage collection system or sewage treatment facility project combined with a water resource activity. Within this sponsorship option, the CWSRF program may fund both projects under a single CWSRF loan if the Department determines that the water resource activity meets program eligibility, funds are available, and the ranking of the sewage project allows its funding.~~

~~(b) The interest rate for the consolidated financing will be reduced whenever possible to a rate resulting in the semi-annual payment for the joint project being equal to the expected semi-annual payment with a traditional CWSRF loan for the sewage collection system or sewage treatment facility project only.~~

~~(c) A public agency that participates in this sponsorship option may either implement the water resource activity itself or may enter into a sponsorship agreement with an implementing partner who will implement the water resource activity. The sponsoring community remains responsible, however, for both the successful completion of the water resource activity and for the repayment of the CWSRF loan. The implementing partner will not be responsible for any repayment to the CWSRF program.~~

~~(d) All applicants for the sponsorship option must submit:~~

~~(A) A completed sponsorship application and project description using a form provided by the Department;~~

~~(B) Evidence that the sponsoring community and implementing partner (if an implementing partner is involved) have authority to undertake the water resource activity;~~

~~(C) An executed copy of the sponsorship agreement entered into with the implementing partner, if applicable; and~~

~~(D) Any other information requested by the Department.~~

~~(e) Financial terms of the sponsorship option will be as follows:~~

~~(A) The interest rate for the sponsorship option must be in accordance with OAR 340-054-0065(5)(h); and~~

~~(B) The requirements of OAR 340-054-0065 will be applicable to the sponsorship option except as specifically modified in this rule.~~

~~(f) The Department will determine the total amount of CWSRF funds to be allocated at the reduced interest rate through the sponsorship option in each program year.~~

Stat. Auth.: ORS 468.423 – 468.440

Stats. Implemented: ORS 468.429 & 468.439

Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0025

Application Process; Project Priority List; Intended Use Plan and Project Priority List; Allocation of Funds

(1) IUP development. The Department will periodically, but not less than annually, develop and submit an Intended Use Plan (IUP) to EPA as described in section 606 of the CWA § 606 and 40 CFR §35.3150, and will update the IUP as specified in section (2) of this rule. The IUP will describe how the department proposes to fund projects through uses of the CWSRF and will include a project priority list that numerically ranking all eligible applications received. The Department will develop the IUP using the following processes in this rule.

(1) Notice: The Department will notify interested parties at least annually of the opportunity to submit applications. Interested parties include, but are not limited to, watershed councils, counties, soil and water conservation districts, special districts and all of the incorporated cities listed in the current edition of the Oregon Blue Book.

(2) IUP update.

(a) Except as specified in subsection (2)(b) of this section, the department will update the annual IUP and project priority list at least every four months or when the department receives five eligible applications, whichever timeframe is shorter, and will submit the updated plan to EPA.

(b) If the department does not receive an eligible application during a four month period and determines the project priority list does not need to be updated, the department will not update the IUP.

(3) IUP public notice. The department will provide public notice and an opportunity for the public to comment on a proposed draft IUP.

(a) The department will notify all new applicants of their project application ranking on the project priority list when an annual IUP is developed and updated.

(b) The department will provide 30 days for public comments on a proposed draft IUP.

(c) An applicant may request the department to reevaluate their project application's score and ranking on the proposed project priority list or to make other changes to an IUP during the public comment period.

(d) The department will consider and respond to all comments submitted during the public comment period before finalizing an IUP.

(4) Project priority list development. Applications: For a The department will include an eligible project under OAR 340-054-0015 onto be considered for the project priority list, if an Applicant must submits a completed application on a department approved form; the application must address an imminent, actual or threatened water quality problem; and the project must be eligible for funding under OAR 340-054-0015.

(3) Timing: In addition to applications received in response to the solicitation for applications indicated in OAR 340-054-0025(1), the Department will accept applications at any time.

(5) Project Ppriority Llist Rranking.:

(a) The Department will develop a project priority list by numerically ranking all eligible proposed projects applications based on the point sum from using the criteria specified in Table 1 of this rule under OAR 340-054-0026 and Table 2 under OAR 340-054-0027. Projects will be numerically ranked based on the sum of the points awarded each proposed project. A maximum of one hundred (100) points is available for a proposed project.

(a) Except as specified in subsection (5)(b) of this section, the department will evaluate each criterion in Table 1 under OAR 340-054-0026 and Table 2 under OAR 340-054-0027 on a point scale from one to five as follows:

(A) One point = No or very low likelihood

(B) Two points = Low or in some minor way

(C) Three points = Moderate to significant likelihood

(D) Four points = High likelihood

(E) Five points = Very high likelihood

(b) The Department will evaluate criteria 1C, 1D, 2B, 2C, 2D, 2E, and 3D in OAR 340-054-0026 and criterion 5 in OAR 340-054-0027 by doubling the point scale specified in subsection (5)(a) of this section. update the project priority list and the IUP at least every four months or upon receipt by the Department of five eligible applications, whichever timeframe is shorter. If no eligible applications are received during a four month period, the project priority list will not be updated.

TABLE 1

CWSRF Project Ranking Criteria

Category 1: Proposed Project's anticipated benefit for water quality or public health

1A — (0 or 8 points) — Project addresses water quality or public health issue within a "special status" water body

1B — (0-6 points) — Project addresses noncompliance with water quality standards, a public health issue or effluent limits related to surface waters

1C — (0-6 points) — Project addresses noncompliance with water quality standards or a public health issue related to groundwater

1D — (0-12 points) — Project ensures that a source already in compliance maintains that compliance.

1E — (0-8 points) — Project improves or sustains aquatic habitat supporting state or federally threatened or endangered species

1F — (0-12 points) — Project incorporates wastewater reuse or a water quality-related conservation process

1G — (0-7 points) — Project improves water quality by mitigating any of the following pollutants: temperature, dissolved oxygen, contaminated sediments, toxics on the EPA Priority Pollutants List, bacteria or nutrients

1H — (0-5 points) — Project supports the implementation of a Total Maximum Daily Load (TMDL) allocation or action plan for a Ground Water Management Area

1I — (0-6 points) — Project addresses a water quality or public health issue involving "Persistent Bioaccumulative Toxics" (PBT's)

Category 2: Potential water quality or public health consequences of not funding the proposed project

2A — (0-5 points) — If the proposed project is not implemented, water quality standards are likely to be exceeded or existing exceedances are likely to worsen

~~2B (0-5 points) If the proposed project is not implemented, the resulting impact is likely to cause a public health problem~~

~~2C (0-5 points) A unique opportunity to implement the proposed project currently exists due to timing, finances or other limitations that would not allow this project to be implemented in the future~~

~~Category 3: Other considerations~~

~~3A (0-3 points) Project has significant educational or outreach component~~

~~3B (0-3 points) Project demonstrates innovative technology which is transferable~~

~~3C (0-3 points) Project is a partnership with other group(s), incorporating self-help, financial or in-kind support~~

~~3D (0-5 points) Project incorporates monitoring, reporting or adaptive management~~

~~3E (0 or 1 point) Project addresses or includes risk management, safety or security measures~~

~~3F (0 minus 5 points) Applicant's past performance with previous Department loans or grants such as, but not limited to, failure to satisfy match requirements of a grant, failure to complete the project or failure to submit any other required deliverable in a timely manner.~~

~~(5) Draft Intended Use Plan, Public Notice and Review:~~

~~(a) The Department will update the IUP whenever changes are made to the PPL.~~

~~(b) With each update the Department will notify all applicants whose projects are included within the draft IUP of their ranking on the PPL.~~

~~(c) The Department will provide notice and an opportunity for the public to comment on proposed changes to the IUP, and will make the draft IUP available to the public.~~

~~(d) Except for revisions to the IUP resulting from applications for expedited loans, the Department will provide at least 30 days for public comments on the draft IUP. The Department will provide at least 5 days for comment on changes to the IUP resulting from new applications for expedited loans.~~

~~(e) During the comment period, any Applicant may request the Department to reevaluate a project's rank on the proposed project priority list or to make other changes to the IUP.~~

~~(f) The Department will consider all comments submitted during the comment period before finalizing the IUP.~~

~~(6) Allocation of Funds:~~

~~(a) During any Department program year (July 1 through June 30), no Borrower on the project priority list (including either loan increases or new project loans) may be allocated more than the greater of \$2.5 million or 15% of the total available funds as reported in the initial IUP for that program year. If CWSRF moneys are available after allocating this limit to each eligible Applicant, additional funds may be allocated above this limit.~~

~~(b) The Department will establish the following funding categories within the CWSRF: Expedited Loan Reserve, Small Community Reserve, Planning Reserve, Green Project Reserve and general fund. The Department will first allocate annual funds to the four reserves in accordance with the criteria in sections (6)(c)(A), (6)(c)(B), (6)(c)(C) and (6)(c)(D). Funds not allocated to one of the reserves will be allocated to the CWSRF general fund.~~

~~(c) The Department will assign projects on the priority list to an appropriate reserve or to the CWSRF general fund. Requests for increases to existing loans will be awarded first. Increases will be awarded from the appropriate reserve~~

or the general fund. Following any allocations for increases, the Department will award loans to projects within each reserve and the general fund for new projects as described in sections (6)(c)(A), (6)(c)(B), (6)(c)(C), (6)(c)(D) and (6)(c)(E).

~~(A) Expedited Loans Reserve. A reserve of \$2 million will be established to fund expedited loans. The Director may increase the cap on this reserve. Individual urgent repair loans are limited to \$150,000. The maximum amount available for a single emergency loan is \$1.85 million. Emergency loans and urgent repair loans will be awarded in rank order. Unused funds still remaining in the expedited loan reserve on May 31 of the program year can be reallocated to the CWSRF general fund.~~

~~(B) Small Community Reserve. A maximum of 15% of the total CWSRF monies will be available in each program year for allocation to small community loans. Local community, design or construction projects eligible within this reserve will be awarded loans in rank order.~~

~~(i) Each project allocation from this reserve will be for not more than the greater of \$750,000 or 25% of the reserve, until all eligible small community requests have been allocated funds. If reserve funds still remain on March 1st of the program year, these remaining funds may be allocated to any unfunded portions of a small community loan request in the order the loan agreements were executed;~~

~~(ii) After reallocating as directed in OAR 340-054-0025(6)(c)(B)(i) above, any funds still remaining in the small community reserve can be moved to the CWSRF general fund.~~

~~(C) Planning Loan Reserve. A maximum of \$3 million of the total CWSRF will be available in each program year for allocation to planning loans. Projects will be selected from the project priority list in rank order for this reserve.~~

~~(i) Each individual allocation from the planning loan reserve will initially not exceed \$150,000. If reserve funds still remain on March 1st of the program year, these remaining funds may be reallocated to any unfunded portions of planning loan requests in the order the loan agreements were executed;~~

~~(ii) After reallocating as directed in OAR 340-054-0025(6)(c)(C)(i) above, any funds still remaining in the planning reserve can be moved to the CWSRF general fund.~~

~~(D) Green Project Reserve. The department will establish a green project reserve to ensure funding of green projects as required by the current fiscal year capitalization grant. Funds from this reserve will only be used to finance that portion of a project determined to be green infrastructure, water or energy efficiency improvements, and other environmentally innovative activities. Eligible projects within this reserve will be awarded funding in rank order.~~

~~(i) Funds remaining in the green project reserve cannot be reallocated to the CWSRF general fund.~~

~~(E) General Fund. All new design or construction project loans not funded from a reserve will be allocated from the general fund. Any remaining emergency or urgent repair, small community or planning projects not already allocated funds from their respective reserves, or allocated less than the total loan amount requested, may be awarded funding in rank order subject to available funds and the maximum loan amount for the program year.~~

~~(F) Loan Increases. Upon request, the Department may increase the funding for previously financed projects up to the maximum loan amount defined for each borrower in section (6)(a) of this rule. These loan increases may be offered by either providing an additional loan at the current interest rate or increasing the amount of the existing loan. Awards for loan increases will be awarded in rank order.~~

~~(6Z) Application removal from the Project Priority List. Modification:~~

~~(a) The following conditions apply to projects on the project priority list.~~

~~(A) The department may retain an applicant's Ranked projects may remain on the project priority list in an IUP for up to 36 months while an applicant pursuing funding all applicable CWSRF financing requirements specified in this division. After 36 months, the Department will notify the Applicant in writing that the project is being removed from the list.~~

(b) After the department initially includes a ranked project on the project priority list, an applicant must submit to the department an annual written project status report to remain on the project priority list.

(B) Applicants whose projects are removed from the project priority list because they have exceeded the 36-month limit may resubmit their projects to the program for ranking and incorporation into the next update of the IUP.

(c) The department may provide one six-month extension to an applicant requesting to remain on the project priority list beyond the 36-month limit. An applicant requesting an extension must submit to the department a written project status progress report on the applicant's project progress indicating the status of their effort in pursuing CWSRF financing and an updated time frame indicating when all CWSRF financing they expect to have completed all requirements will be completed necessary to be awarded funding.

(d) The department may will remove a project from the project priority list upon written notice to the an applicant if:

(A) An applicant does not submit an annual written project status report as required in subsection (6)(b) of this section;

(B) An applicant does not request a six-month extension beyond the 36-month limit and submit the project status report as required in subsection (6)(c) of this section;

(C) The department determines the project scope changed from the original ranked application;

(D) at any time the department determines that the project does not meet eligibility requirements;

(E) An applicant does not the Borrower no longer requires CWSRF financing; or

(F) the An Applicant requests to be removed from the project priority list removal.

(e) If the department removes a project from the project priority list as specified in paragraph (6)(d)(A through C) of this section, an applicant may resubmit to the department a loan application for an eligible project that the department will evaluate in accordance with section (5) of this rule.

Stat. Auth.: ORS 468.020 and ORS 468.423—468.440

Stats. Implemented: ORS 468.423 & to ORS 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 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10

340-054-0026

Table 1: CWSRF Project Ranking Criteria for Non-planning Loans

Category 1. Water quality standards and public health considerations.

1A – Does project improve water quality by addressing water quality parameters including, but not limited to, the following: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?

1B – Does project ensure that a facility currently in compliance, but at risk of noncompliance, maintains compliance?

1C – Does project address noncompliance with water quality standards, public health issues or effluent limits related to surface waters, biosolids, water reuse or groundwater?

1D – If project is not implemented, is a water quality standard likely to be exceeded or an existing exceedance likely to worsen?

Category 2. Watershed and health benefits.

2A – Does project improve or sustain aquatic habitat supporting native species or state or federally threatened or endangered species?

2B – Does project address water quality or public health issue within a federally designated wild and scenic river or sole source aquifer, state designated scenic waterway, the Lower Columbia River or Tillamook Bay estuary, a river designated under OAR 340-041-0350, or a significant wetland and riparian area identified and listed by a local government?

2C – Does project support implementation of a total maximum daily load (TMDL) allocation, a department water quality status and action plan or designated groundwater management area declared under ORS 468B.180?

2D – Does project provide performance based water quality improvements supported by monitoring and reasonable assurance that the project will continue to function over time?

2E – Does project integrate or expand sustainability or the use of natural infrastructure, or use approaches including, but not limited to, water quality trading, that are not specified in Table 1, 2F through 2I of this rule?

2F – Does project incorporate or expand green stormwater infrastructure including, but not limited to, practices that manage wet weather and that maintain and restore natural hydrology by infiltrating, evapotranspiring, harvesting or using stormwater on a local or regional scale?

2G – Does project incorporate or expand water efficiency including, but not limited to, the use of improved technologies and practices to deliver equal or better services with less water such as conservation, reuse efforts or water loss reduction and prevention?

2H – Does project incorporate or expand energy efficiency including, but not limited to, the use of improved technologies and practices to reduce energy consumption of water quality projects, use energy in a more efficient way or to produce or utilize renewable energy?

2I – Does project incorporate or expand environmentally innovative projects including, but not limited to, demonstrating new or innovative approaches to deliver services or manage water resources in a more sustainable way?

Category 3. Other considerations.

3A – Does project include a long-term planning effort that addresses financial, managerial or technical capability, or asset planning that ensures project will be maintained?

3B – Does project include a significant on-going educational or outreach component?

3C – Does project incorporate other resources including, but not limited to, in-kind support, other funding sources or a partnership with a governmental, tribal or non-governmental organization?

3D – Does project address a water quality improvement or restoration need for a small community?

3E – Does project include a sponsorship option?

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

340-054-0027

Table 2: CWSRF Project Ranking Criteria for Planning Loans

1 – Will the scope of the planning effort include more than one water quality benefit, pollutant or restoration effort?

2 – Will the scope of the planning effort include sustainability?

3 – Will the scope of the planning effort take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?

4 – Will the scope of the planning effort include financial, managerial or technical capability aspects of the project?

5 – Will the scope of the planning effort include integrating natural infrastructure and built systems?

6 – Will the scope of the planning effort demonstrate applicant cost effectiveness by considering three or more project alternatives such as optimizing an existing facility, regional partnership or consolidation?

Stat. Auth.: ORS 468.020 and ORS 468.440

Stats. Implemented: ORS 468.423 to ORS 468.440

340-054-0035

Final Stage of Application Process for Design Loans or Construction Loans

~~The Department will administer loans for design or construction of both point source and nonpoint source projects.~~

~~(1) In addition to the loan application and items specified in OAR 340-054-0024(1), applicants applying for a CWSRF loan for a design or construction project must submit the following documents to be considered for loan approval:~~

~~(a) A planning document that the Department determines adequately documents the efficacy and appropriateness of the proposed project to remediate the identified water pollution control problem. For sewage collection systems or sewage treatment facilities, the planning document must meet the requirements of the Department's CWSRF Procedures Manual (February 1, 2008) and other planning guidance in effect at the time of submittal~~

~~(b) In accordance with OAR 340-018-0050, a Land Use Compatibility Statement (LUCS) from the appropriate planning jurisdiction demonstrating compliance with the Department of Land Conservation and Development's (DLCD) acknowledged comprehensive land use plan and statewide land use planning goals.~~

~~(c) An environmental review prepared in accordance with the requirements of the EPA approved State Environmental Review Process (SERP) described in the CWSRF Procedures Manual (February 1, 2008).~~

~~(d) Any other information requested by the Department.~~

~~(2) In addition to the requirements of section (1) of this rule, applicants for a CWSRF loan for the design or construction of sewage collection systems or sewage treatment projects must submit the following documents to be considered for loan approval:~~

~~(a) A Department approved sewer use ordinance adopted by all municipalities and service districts serviced by this project that meets the provisions of this section. The sewer use ordinances must prohibit any new connections from inflow sources into the sewage collection system; and require that no wastewater introduced into the sewage collection system contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety or adversely affecting the project or precluding the selection of the most cost-effective alternative for the project.~~

~~(b) A demonstration that the Applicant has adopted a user charge system that meets the requirements of the User Charge System section of the CWSRF Procedures Manual (February 1, 2008).~~

~~(c) For projects serving two or more municipalities, the Applicant must submit the executed inter-municipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed sewage collection system or sewage treatment facility.~~

~~(d) In accordance with OAR chapter 340, division 052, Applicants for construction-only loans must submit Department approved plans and specifications for the project as applicable.~~

~~(e) For projects with estimated costs in excess of \$10 million, the Applicant must submit a value engineering study prepared in accordance with the requirements of the CWSRF Procedures Manual (February 1, 2008).~~

Stat. Auth.: ORS 468.423—468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative correction 10-29-98; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08; DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0036

Reserves, CWSRF General Fund and Project Funding

(1) Allocation to reserves and CWSRF general fund. The department will allocate available CWSRF funds in a state fiscal year first to the small community, planning and green project reserves, and then to the CWSRF general fund based on the following amounts:

(a) A maximum of 25 percent of the total available CWSRF funds to the small community reserve.

(b) A maximum of \$3 million to the planning reserve.

(c) An amount at least equal to the minimum required by the current capitalization grant to the green project reserve.

(d) Remaining amount of funds not allocated to the reserves specified in this section to the CWSRF general fund.

(2) Project funding increase.

(a) The department will offer a funding increase based on the original project priority list ranking to a borrower for an existing project loan before offering funding to a loan applicant for a new project loan if:

(A) Funding is available in the CWSRF; and

(B) A borrower submits a written request to the department for additional funding, has legal authority to borrow and financial capability to repay the increased loan amount.

(b) The department will award a funding increase to a borrower in an amount specified in section (3) of this rule by increasing the amount of the existing loan or executing an additional loan at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year the department will assign a project to an appropriate reserve, to the CWSRF general fund or to both, and will allocate an amount to a borrower in project priority list rank order based on availability of funds that:

(A) Is not more than the greater of \$2.5 million or 15 percent of the total available CWSRF funds in a state fiscal year. The department may allocate additional funds above this limit if funds are available after allocating this limit to all borrowers who request project funding in a state fiscal year.

(B) Is not more than the greater of \$750,000 or 25 percent of the small community reserve, until all eligible small community requests have been allocated.

(C) Is not more than \$250,000 of the planning reserve.

(D) Only finances the portion of a project funded under the green project reserve that the department determines to meet federal requirements for green infrastructure, water or energy efficiency improvement, or other environmentally innovative activities as defined by current EPA requirements.

(b) During a state fiscal year the department will allocate funding for a new design or construction project loan from the CWSRF general fund if the project is not funded from a reserve.

(c) The department will allocate in project priority list rank order available funding from the CWSRF general fund for a small community or planning project that was not allocated from their respective reserves, or allocated less than the total loan amount requested.

(4) Reallocation of reserve funds.

(a) If small community reserve or planning reserve funds remain on March 1 of a state fiscal year, the department will reallocate in project priority list rank order remaining funds to a borrower who requests additional funding for an existing project currently funded under these reserves. If funds remain after this reallocation, the department will move these funds to the CWSRF general fund.

(b) The department will not reallocate funds remaining in the green project reserve to the CWSRF general fund.

(5) Sponsorship option allocation. The department will determine the total amount of CWSRF funds to be allocated at the reduced interest rate through the sponsorship option in each state fiscal year.

Stat. Auth.: ORS 468.020 and ORS 468.440
Stats. Implemented: ORS 468.423 to ORS 468.440

340-054-0055

Loan Approval and Review Criteria

~~(1) Loan Approval. A loan is approved when the Department signs a loan agreement.~~

~~(2) Loan Review Criteria. To obtain loan approval, the following criteria must be met:~~

~~(a) The proposed project must be eligible for funds under this Division.~~

~~(b) The Applicant must submit a completed loan application including all applicable information, approvals and associated requirements of OAR 340-054-0021; 340-054-0022; 340-054-0023; 340-054-0024 and 340-054-0035.~~

~~(c) The Applicant must demonstrate to the Department's satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance of the proposed sewage facility, nonpoint source control or estuary management project. In addition, for revenue-secured loans described under OAR 340-054-0065(2), the Department may require the following criteria to be met:~~

~~(A) The existing sewage facility, nonpoint source control or estuary management project is free of any operational and maintenance problems that could materially impede the proposed system's function or affect the Applicant's ability to repay the loan from user fees;~~

~~(B) The Borrower's revenue stream is not at risk from undue dependence upon a limited portion of the system's customer base or a pattern of delinquent payment from that portion of the system's customer base; and~~

~~(C) The Borrower must have the ability to collect from non-paying customers.~~

~~(d) CWSRF funds must be available to finance the loan.~~

~~(e) To meet the requirements of ORS 468.425, the Department may establish other loan criteria and require other documentation as appropriate, including, but not limited to, an opinion of legal counsel that the loan agreement is enforceable under the Borrower's legal structure.~~

~~Stat. Auth.: ORS 468.423 – ORS 468.440~~

~~Stats. Implemented: ORS 468.433 & ORS 468.437~~

~~Hist.: DEQ 2 1989, f. & cert. ef. 3 10 89; DEQ 31 1989(Temp), f. & cert. ef. 12 14 89; DEQ 30 1990, f. & cert. ef. 8 1 90; DEQ 1 1993, f. & cert. ef. 1 22 93; DEQ 10 2003, f. & cert. ef. 5 27 03~~

340-054-0056

CWSRF Loan Use Conditions

(1) Clean Water Act plans. The department will only provide a loan to a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.

(2) Refinancing a long-term loan. The department will not provide a loan that will be used for refinancing a long-term loan or other debt obligations.

(3) Refinancing an interim loan. The department may provide a loan to refinance an interim loan or self-generated funds used to pay department approved project costs if the borrower:

(a) Provides the department with a written notice of intent to apply for long-term financing;

(b) Wants to proceed with the project using interim financing or self-generated funds; and

(c) Agrees to proceed at its own risk whether or not the CWSRF is available to provide long-term financing.

(4) Interim financing. The department may provide short-term, construction period financing for an eligible project if the following conditions are met:

(a) Liquidity of the CWSRF fund is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed by prior obligations;

(b) The borrower has a legally enforceable obligation for long-term project financing satisfactory to the department; and

(c) The loan agreement for interim financing will stipulate the department is not obligated to provide long-term financing for the project.

Stat. Auth.: ORS 468.020 and ORS 468.440

Stats. Implemented: ORS 468.423 to ORS 468.440

340-054-0060

Loan Agreement and Conditions

The department will include conditions in a Each loan agreement ~~will include conditions that are~~ applicable to the type of project being financed, ~~which include, including,~~ but ~~are~~ not limited to, the following:

(1) Timely use of loan funding. The department may cancel a loan agreement if a borrower fails to take reasonable steps to begin using loan proceeds within two years after signing a loan agreement.

(24) Accounting. ~~The A~~ Borrower must maintain all CWSRF project accounts as separate accounts and must use accounting, audit and fiscal procedures that conform to Generally Accepted Governmental Accounting Standards and the requirements of the Governmental Accounting Standards Board.

(32) Records. ~~The A~~ Borrower must retain project files and records for ~~at least~~ three years after ~~project~~ performance ~~affirmative~~ certification or project completion as determined by the ~~D~~department ~~or such longer period as may be required by applicable state or federal law. A borrower must also retain F~~financial files and records ~~must be retained until for three years after~~ the loan is repaid in full.

(43) Wage ~~requirements~~ Rates.

(a) A borrower for a construction project of a treatment works as defined in the CWA § 212, including a nonpoint source pollution (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in the CWA § 212, must comply with the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144 and 3146 or the prevailing wage rate requirements for public works projects under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540, whichever is higher.

(b) A borrower for a project not specified in subsection (4)(a) of this section must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540. The Applicant must ensure compliance with applicable federal or state wage rates, if any, for construction projects.

(5) Debarment and suspension. A borrower must ensure compliance with Subpart C of 2 CFR 18, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 CFR 1532, Responsibilities of Participants Regarding Transactions.

(4) Operation and Maintenance Manual. For the construction of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower must submit a draft and final facility operation and maintenance manual at the time and in a format specified by the Department.

(65) Engineering documents ~~Plans and Specifications~~. If a borrower uses CWSRF financing ~~F~~for the construction of a ~~wastewater~~sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower ~~it~~ must submit to obtain the ~~D~~department's approval of project plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation required by OAR 340-052 before commencement of construction.

(76) Inspections and ~~P~~progress ~~R~~reports.

(a) ~~During the construction phase of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the A~~ Borrower must ~~provide~~have a qualified inspector under the direction of a registered civil, mechanical or electrical engineer, as appropriate, conduct on-going inspections ~~during the construction phase of a wastewater facility subject to OAR 340-052~~ to ensure the project complies with approved plans and specifications. ~~These inspections must be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate.~~ The ~~D~~department or its representative may enter property owned or controlled by the ~~B~~borrower to conduct interim inspections and ~~may~~ require progress reports sufficient to determine compliance with approved plans and specifications and with other ~~provisions of the loan agreement~~ provisions.

(b) ~~For projects not subject to Department review under OAR chapter 340, division 052, t~~The ~~D~~department may ~~seek the request~~ review and analysis of construction plans from relevant agencies or offices to ensure ~~those the project~~ plans ~~not subject to department review under OAR 340-052~~ support the successful implementation and completion of the project. ~~During implementation of the project, the A~~ Borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure ~~that~~ the project as constructed conforms to project plans and other provisions of the loan agreement.

(87) Loan ~~A~~amendments.

~~(a) The department will not require a loan amendment for C~~changes in project work that are consistent with ~~the project objectives of the project~~ and within the loan scope and funding level. ~~of the loan do not require the execution of a formal loan amendment.~~

~~(b) The department will execute A~~ loan amendment ~~if will be required in the following situations:~~

~~(Aa) The department awards a B~~borrower ~~receives~~ an increase in the original approved loan amount at any time during the project. ~~The Department may approve loan increases if funds are available, and the Borrower demonstrates both the legal authority to borrow and the financial capability to repay the increased loan amount.~~

~~(Bb) The B~~borrower requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all loan proceeds. ~~or-~~

~~(C) The department determines a borrower must meet additional federal or state requirements for CWSRF financing.~~

~~(98) Change O~~orders. ~~The Borrower must submit Change Orders to the Department for engineering and financial review. The D~~department ~~will may~~ approve or reject ~~thea C~~change ~~O~~orders based on the loan eligibility of the project modifications and on ~~its~~ engineering value in accordance with OAR 340-052-0015. A borrower must submit a change order to the department for engineering and financial review:

(a) When any change order is executed, and

(b) Prior to executing any change order that exceeds \$100,000 or will alter project performance.

~~(109) Project P~~performance ~~C~~certification for a ~~sewage collection system or sewage treatment wastewater~~ facility. ~~The A B~~borrower must submit to the ~~D~~department, within a timeframe specified by the department, a Pproject Pperformance documents to verify if the facility meets performance and operational requirements and specifications which the project was planned, designed and built to achieve. The documents may include, but are not limited to, construction certification, performance evaluation report or performance Ccertification. ~~that meets the requirements of the CWSRF Procedures Manual (February 1, 2008) within the time frame specified by the Department.~~

~~(110) Eligible C~~construction ~~C~~costs. The department will disburse Lloan ~~funds~~disbursements for construction costs ~~will be~~ limited to work that complies with plans, specifications, change orders and addenda reviewed or approved by the ~~D~~department.

~~(124) Adjustments. The D~~department may, at any time, review and audit requests for payment and make adjustments for eligibility, math errors, items not built or bought, unacceptable construction ~~and or~~ other discrepancies.

~~(132) Contract and B~~bid ~~D~~documents. ~~The A B~~borrower must submit a copy of the awarded contract and bid documents to the ~~D~~department, including a tabulation of all bids received.

~~(143) Audit. Borrowers may satisfy audit requirements in one of the following two ways:~~

~~(a) If requested by the department, a borrower must submit audited financial statements to the department each year until the loan is repaid. An External Audit. Within one year after Performance Certification, the Borrower must submit an audit of the project expenditures consistent with Generally Accepted Accounting Principles conducted by a certified auditor. The Borrower will pay for this audit.~~

~~(b) If federal funds are disbursed as loan proceeds, a borrower must comply with the federal requirements of the Single Audit Act Amendments of 1984, 31 U.S.C. §§7501-7507 (1994) as amended by Pub. L. 104-156, §§ 1-3, 110 Stat. 1397 (1996), and Office of Management and Budget Circular A-133, Audits of States, Local Governments and Non-profit Organizations. Internal documentation. The Borrower must submit to the Department:~~

~~(A) A complete accounting of project costs incurred by the Borrower including documentation to support each cost element; and~~

~~(B) One copy of the Borrower's annual audited financial report each year until the loan is repaid. Audit compliance with OMB A-133 is required if federal funds are disbursed as loan proceeds.~~

~~(14) Operation and Maintenance. The Borrower must provide the necessary resources for adequate operation, maintenance and replacement of a sewage facility, nonpoint source control or estuary management project and retain sufficient operating personnel to operate the facility.~~

(15) Default Remedies. A loan agreement must provide adequate remedies for the department to enforce the terms of the agreement. Upon default by a Bborrower, the Ddepartment may proceed with one or more of the following:

(a) Pursue any remedy available to it against the borrower at law or in equity.

(b) Appoint a receiver at the expense of the Bborrower to operate the facility that generates~~produces~~ the pledged revenues.

(c) Set and collect utility rates and charges pledged as security for the loan.

(d) Withhold any amounts otherwise due to the Bborrower from the State of Oregon and direct ~~that~~ such funds be applied to the debt service and fees due on the CWSRF loan. If the Ddepartment finds ~~that~~ the loan to the Bborrower is otherwise adequately secured, the Ddepartment may waive this right in the loan agreement or other loan documentation to withhold state revenue due to the Borrower.

(e) Declare all or any part of the indebtedness immediately due and payable.

(16) Release. ~~The A~~ Bborrower ~~shall~~must release and discharge the Ddepartment, its officers, agents and employees from all liabilities, obligations and claims ~~arising out of the~~occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between the Ddepartment and the Bborrower.

(17) Effect of document ~~A~~approval or ~~C~~certification of Documents.

(a) The department's ~~R~~review and approval of facilities plans, design drawings and specifications, or any other documents by or for the Ddepartment does not relieve ~~the a~~ Bborrower of responsibility to properly plan, design, build and effectively operate and maintain a sewage-wastewater or stormwater facility, nonpoint source control or estuary management project as required by law, regulations, permits and good management practices.

(b) The Ddepartment ~~is~~may not be held responsible for:

(A) aAny project costs or any losses or damages resulting from defects in ~~the~~ plans, design drawings and specifications, or other sub-agreement documents.

(B) The Department is not responsible for ~~v~~verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(18) Reservation of ~~R~~rights:

(a) ~~Nothing in this rule prohibits a~~ A Bborrower is not prohibited from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing project work; and

(b) ~~Nothing in the rule affects t~~The Ddepartment's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a Bborrower that fails to carry out its obligations under OAR Chapter 340 is not affected by this rule.

(19) Other ~~P~~provisions and documentation. The department may include other provisions in a CWSRF loan agreements; will contain such other provisions as the Department may reasonably require necessary to meet the goals of the Clean Water Act and ORS 468.423 to 468.440, and require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Stat. Auth.: ORS 468.020 and ORS 468.423—468.440

Stats. Implemented: ORS 468.423 ~~3~~ & to ORS 468.440 ~~37~~

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; 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; Administrative Correction; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08

340-054-0065

Loan Types. Terms and Interest Rates

~~As required by ORS 468.440, the following loan terms and interest rates are established:~~

(1) Loan Types of Loans. A CWSRF loan must be one of the following ~~types of loans~~:

(a) A loan secured by a general obligation bond or other full faith and credit obligation of ~~the a B~~borrower, ~~which that~~ is supported by the ~~B~~borrower's unlimited ad valorem taxing power.

(b) A loan secured by a bond or other obligation of ~~the a B~~borrower that is not subject to appropriation and meets the requirements specified in section (2) of this rule. ~~has been rated Investment Grade by Moody's Investor Services, Standard and Poor's Corporation or another national rating service acceptable to the Department.~~

(c) A ~~R~~revenue ~~S~~secured ~~L~~loan that ~~complies with~~meets the requirements specified in section (2) of this rule.

(d) An ~~A~~alternative ~~L~~loan that ~~complies with~~meets the requirements specified in section (3) of this rule.

~~(e) A Discretionary Loan that complies with section (4) of this rule.~~

(2) Revenue ~~S~~secured ~~L~~loans. A revenue secured loan offered by the department ~~These loans~~ must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged ~~to by the B~~borrower to the department; ~~†The obligation to pay must include a pledge of security acceptable to the department may not be subject to the appropriation of funds.~~

(b) Include a rate provision that requires the ~~B~~borrower to impose and collect revenues sufficient to pay:

(A) All expenses of operation, maintenance and replacement of a sewage wastewater or stormwater facility, nonpoint source control or estuary management projects.

(B) All debt service.

(C) All other financial obligations including, but not limited to, ~~(such as~~ contributions to reserve accounts) imposed in connection with prior lien obligations.

(D) An amount equal to the coverage requirements of the loan. This requirement is the product of the coverage factor times the debt service due in that year on the CWSRF loan. The coverage factor used must correspond to the coverage factor and reserve percentage ~~set~~ selected by the ~~B~~borrower from subsection (2)(d) of this section.

~~(E) Amounts required to provide coverage on prior lien obligations or new lien obligations the Borrower may incur that the Department determines are inadequately secured or otherwise may adversely affect the ability of the Borrower to repay the CWSRF loan.~~

(c) ~~Contain~~ Include a debt service reserve provision requiring the ~~B~~borrower to maintain a pledged reserve ~~that is~~ dedicated to ~~the payment of~~ the CWSRF loan payment and that meets the following requirements:

(A) The ~~loan-debt service~~ reserve must be maintained in an amount ~~that is~~ at least equal to the product of the reserve percentage ~~shown-listed~~ in subsection (2)(d) of this section times one half the average annual debt service during the repayment period based on the repayment schedule or revised repayment schedule in the loan agreement. The reserve percentage selected from subsection (2)(d) of this section must correspond to the coverage factor selected for the CWSRF loan.

(B) ~~A L~~loan reserves may be funded with ~~cash-of the B~~borrower's cash, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to the ~~D~~department. If the ~~D~~department determines ~~that reserve funding-of the reserve-as-described-above~~ imposes an undue hardship on the ~~B~~borrower, the ~~D~~department may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following ~~sets-of~~ coverage factors (~~net income to debt service~~) and reserve percentages (~~percentage of one-half the average annual debt service~~):

~~Coverage Factor* Reserve Percentage**~~

~~(A) Option 1:- 1.05:1--100 percent%~~

~~(B) Option 2:- 1.15:1--75 percent%~~

~~(C) Option 3:- 1.25:1--50 percent%~~

~~(D) Option 4:- 1.35:1--25 percent%~~

~~*Net Income to Debt Service~~

~~**Percentage of 1/2 the Average Annual Debt Service~~

(e) Include a requirement for ~~the borrower to conduct a~~ periodic rate review and adjustment of rates, if necessary, to ensure estimated revenues in subsequent years are sufficient.

(f) Include a requirement that if revenues fail to achieve the required rate level, the ~~B~~borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. The ~~D~~department may determine that failure to adjust rates does not constitute a default if the ~~B~~borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that ~~producesgenerates~~ the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the ~~B~~borrower must take prompt action to restore the reserve to the required minimum amount.

(h) Include a requirement restricting additional debt appropriate to the financial condition of the ~~B~~borrower.

(i) Prohibit the ~~B~~borrower from selling, transferring or encumbering any financial or fixed asset of the utility system that produces the pledged revenues if the ~~B~~borrower is in violation of ~~any~~a CWSRF loan requirements, or if such sale, transfer or encumbrance may cause a violation of ~~any~~a CWSRF loan requirements.

(3) Alternative ~~L~~loans. The ~~D~~department may authorize ~~an A~~alternative ~~L~~loans for ~~a~~ reasonable alternative ~~financing methods-of-financing~~ if the ~~B~~borrower demonstrates to ~~the department's the~~satisfaction-of-the-Department that:

(a) ~~It may be unduly burdensome or costly to the Borrower to borrow-Borrowing~~ money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection (1)(a), (b) or (c) of this rule ~~is unduly burdensome or costly to the borrower~~.

(b) The ~~A~~alternative ~~L~~loan has a credit quality ~~that is~~ substantially equal to, or better than, the ~~credit quality of a R~~revenue ~~S~~secured ~~L~~loan ~~credit quality to thatthe B~~borrower. ~~In determining whether an Alternative Loan meets the requirement, t~~The ~~D~~department may consult with a financial advisor and may charge the ~~Applicant the borrower~~

reasonable consultation costs ~~of such consultation~~ to determine if an alternative loan meets the credit quality requirement.

~~(4) Discretionary Loan. The Department will make a Discretionary Loan only to a small community that the Department determines cannot practicably comply with the requirements of subsection (1)(a), (b), (c) or (d) of this rule. Discretionary Loans must comply with section (5) of this rule and otherwise be on terms approved by the Department. No new Discretionary Loans may be made at any time that the total principal amount of Discretionary Loans outstanding exceeds 5% of the total assets of the Fund.~~

~~(45) Interest Rates.:~~

(a) Effective date. The interest rates as specified in this section are effective for all loan agreements executed on or after January 1, 2013.

(ba) Base rate. The department will determine the base rate used in computing the interest rates on all direct loans for a quarter will be based on the weekly average of the weekly state and local government bond interest rates for the preceding quarter. This base rate will be the "state and local bonds" entry reported in "Federal Statistical Release Selected Interest Rates, H.15-" posted by This entry is quoted by the Federal Reserve from the "Bond Buyer Index" for general obligation bonds (20 years to maturity, mixed quality).

~~(cb) Planning Loans. The interest rate for a planning loans will be equal to 25 percent of the base rate.~~

~~(de) Local Community Loans. The interest rate for a local community loans will be equal to 50 percent of the base rate.~~

~~(d) Urgent Repair Loans. The interest rate for urgent repair loans will be equal to the base rate.~~

~~(e) Discretionary Loans. The interest rate for discretionary loans funded under section (4) of this rule will be equal to 50% of the base rate.~~

~~(f) Proactive Design and Construction Loans (including qualifying wastewater reuse projects). Loans for proactive design or construction projects will be made at one of the following interest rates:~~

~~(A) 45% of the base rate (with a maximum repayment period of 10 years);~~

~~(B) 55% of the base rate (with a maximum repayment period of 20 years);~~

(eg) All Other Direct Loans. Except as provided in OAR 340-054-0065(102), the department will provide the following interest rates for all other CWSRF Loans will be made at one of the following interest rates:

(A) 25 percent of the base rate, (with a maximum repayment period of 5 years.);

(B) 30 percent of the base rate for small communities with less than statewide median household income or 45 percent for all other borrowers, (with a maximum repayment period of 10 years.);

(C) 35 percent of the base rate for small communities with less than statewide median household income or 50 percent for all other borrowers, (with a maximum repayment period of 15 years.);

(D) 40 percent of the base rate for small communities with less than statewide median household income or 55 percent for all other borrowers, (with a maximum repayment period of 20 years.);

(fh) Sponsorship option. When the sponsorship option is implemented in conjunction with within the scope of a construction loan, the department resulting reduced interest rate is defined as a rate calculated to approximate the semi-annual payment for a loan obtained to construct the sewage collection system or sewage treatment facility by itself, or a one percent interest rate, whichever is higher.

(A) Will calculate the debt service on the wastewater facility project based on subsection (4)(e) of this rule;

(B) Will calculate the debt service on a combined sponsorship loan by reducing the interest rate so the debt service on the sponsorship loan equals the debt service as calculated in subsection (4)(f)(A) of this rule; and

(C) May not reduce the resulting interest rate below one percent.

(gi) Bond proceeds for direct loans. The department may use Bbond proceeds that are matching funds for federal capitalization grants ~~may be used~~ to fund direct loans at the interest rates listed in this section. This subsection will not be affected by any change in the source of repayment for matching bonds.

(56) Interest Aaccrual and Ppayment Pperiods. Interest accrual begins ~~at the time of each~~when the department makes the first CWSRF loan disbursement ~~from the CWSRF to thea B~~borrower. A borrower must include Aall outstanding accrued interest ~~will be included~~ with each loan repayment.

(67) Annual loan Ffee.

(a) Except as provided in subsections (6)(b) and (6)(c) of this section, Thea Bborrower must pay the department necessary and reasonable costs of administering the fund through the loan's Annual Fee. An annual loan fee of 0.5% percent ofon the unpaid loan balance will be charged on each loan, except planning loans, during the repayment period. This fee is due and payable in addition to thespecified in the payments schedule identified in theits loan agreement's payment schedule. This annual loan fee is in addition to any other payments a borrower is required to make under its loan agreement.

(b) From January 1, 2013 through December 31, 2014, the annual loan fee will be 0.25 percent on the unpaid loan balance.

(c) The department will not charge a borrower any annual loan fee for a planning loan.

(8) Review of interest rates and fees. The interest rates on CWSRF loans described in OAR 340-054-0065(5) of this rule will be effective for all loan agreements executed on or after June 1, 2003.

(79) Commencement of Lloan Rrepayment. A borrower must begin its loan Pprincipal and interest repayments on loans will begin within one year of the date the facility is operationally complete and ready for the purpose it was planned, designed, and built of Initiation of Operations or the project is completedcompletion, as determined by the Ddepartment.

(840) Loan Tterm.

(a) A borrower All loans must be fully repay a loan repaid within 20 years of the date of Initiation of Operations or project completion, in accordance with a schedule determined by the Ddepartment. Generally, the loan repayment term will be no longer thanThe department will consider the useful life of the assets financed when determining a schedule, and the repayment term for;and will be based on the Borrower's ability to pay.

(Aa) The loan term forA planning loans will not exceed five years.

(Bb) The loan term forA local community loans will not exceed ten years.

(C) All other loans will not exceed 20 years after project completion.

(c) The loan term for urgent repair loans will not exceed ten years.

(d) The loan term for discretionary loans will not exceed twenty years

(e) Loan terms for emergency loans, design loans or construction loans are described in OAR 340-054-0065(5)(g).

~~(bf) The department will allow Loan terms for proactive design loans or construction loans are described in OAR 340-054-0065(5)(f). Prepayments will be allowed at any time without penalty on all CWSRF loans except as specified in section (10) provided for in OAR 340-054-0065(12) of this rule.~~

~~(944)~~ Minor ~~V~~variations in ~~L~~loan ~~T~~terms. The ~~D~~department may ~~allow~~authorize minor variations in ~~the~~ financial terms of loans described in this ~~section~~rule to facilitate administration and repayment of a loans.

~~(102)~~ Leveraged ~~L~~loans.

~~(a)~~ The ~~D~~department may:

~~(a) Increase the size of the fund by selling state bonds to be repaid and secured by CWSRF loan repayments, reserves and reserve interest earnings.~~

~~(b)~~ Fund loans with bond proceeds ~~as a part of~~through a leveraged loan program ~~with~~under the following terms and conditions:

~~(A) Selling bonds to leverage the CWSRF program will increase the Department's ability to provide loan assistance to help public agencies comply with the Department's mandates.~~

~~(AB)~~ Interest rates ~~on leveraged loans~~ will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65 ~~percent~~% of the base rate.

~~(BC)~~ Loan fees ~~for leveraged loans~~ will be in accordance with section (6) of this rule. ~~not exceed the amount charged for direct loans of the same size and repayment period.~~

~~(C) Notwithstanding other provisions of this rule, the department may make changes to the terms and conditions of a leveraged CWSRF loan to make it marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.~~

~~(bD)~~ ~~Costs of b~~Bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.

~~(E) Notwithstanding other provisions of this rule, the Department may make changes to the terms and conditions of leveraged CWSRF loans to make them marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.~~

~~(113)~~ Additional subsidization. The department must provide additional subsidization to the minimum extent required by the current federal fiscal year capitalization grant. ~~This a~~AAdditional subsidization will be in the form of principal forgiveness in accordance with the criteria established in this ~~rule~~section. ~~A L~~loans with ~~additional subsidization in the form of~~ principal forgiveness ~~are~~is subject to standard interest rates, fees, and loan terms as defined in ~~the this~~ rules of this division.

~~(a) Principal forgiveness priority. The department will offer principal forgiveness to a project based on original project priority list rank order and in the following priority to a:~~

~~(A) Small community with less than statewide median household income for an increase to a current planning loan and then to a new planning loan.~~

~~(B) Small community with less than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan.~~

~~(C) Small community with equal to or more than statewide median household income for an increase to a current planning, design or construction loan and then to a new planning, design or construction loan.~~

(D) Community other than a small community with less than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan; and then to a

(E) Community other than a small community with equal to or more than statewide median household income for an increase to a current design or construction loan and then to a new design or construction loan.

(b) Principal forgiveness ineligibility. A project funded under the sponsorship option is not eligible for principal forgiveness.

(ca) Principal forgiveness for a point source project. The department will base Eligibility and the amount of principal forgiveness for a point source project are based on the community's median household income (MHI). The MHI used to calculate the level of principal forgiveness is based on the most recent and available income data provided by the U.S. Census Bureau. When an applicant is not a jurisdiction whose MHI is reported directly by the U.S. Census Bureau, The department may use sub-data such as census tract, or block tract data or an income survey approved by the department will be used as a basis for calculating the applicant's or borrower's MHI. In lieu of U.S. Census Bureau data, an income survey approved by the department may also be used to determine a community's MHI.

(A) Principal forgiveness threshold. An applicant whose MHI, as calculated in subsection (a) of this section, is equal to or greater than the statewide MHI is not eligible for principal forgiveness.

(AB) Calculating the amount of Determining principal forgiveness eligibility.

(i) For an applicant whose MHI is less than the statewide MHI, the An applicant's or borrower's MHI is multiplied by an affordability index and then the result is divided by twelve if its MHI is less than the statewide MHI. The result of this calculation yields an affordability rate expressed in dollars per month. The department will use the affordability rate to determine the maximum amount of additional subsidization for which the principal forgiveness an applicant or borrower is eligible for. An applicant or borrower must submit and obtain written department approval for its A projected sewer rate that reflects, reflecting the additional costs of the proposed project, must be submitted by the applicant and approved in writing by the department.

(ii) The affordability index is used to calculate the affordability rate. The affordability index of 1.25 percent is the department's standard factor representing the percentage of a household's income necessary to cover the cost of sewer service. This factor is adjusted semi-annually for inflation based on the Portland, Oregon consumer price index as listed by the Oregon Employment Department.

(iii) Calculating the affordability rate (AR): AR = (Applicant's MHI x affordability index)/12

(iv) If the affordability rate (in cost per month) is less than the projected sewer rate (in cost per month), then the an applicant or borrower is eligible for principal forgiveness.

(BC) Principal forgiveness amount. The maximum amount of principal forgiveness is the amount required to reduce the projected sewer rate to a level equal to the calculated affordability rate. The total amount of principal forgiveness the department will offer to a point source project must will not exceed 75 percent of the loan amount or \$1 million, whichever is less.

(db) Principal forgiveness for a nonpoint source control or an estuary management project. A nonpoint source control or an estuary management project is eligible for principal forgiveness. The total amount of principal forgiveness the department will offer offered to any one to a nonpoint source control or estuary management project may must not exceed 30 percent of the loan amount or \$1 million, whichever is less.

(ee) Principal forgiveness for a planning project. A planning project is eligible for principal forgiveness. The total amount of principal forgiveness the department will offer offered to any one planning project may must not exceed 30 percent of the loan amount.

Stat. Auth.: ORS 468.020 and ORS 468.423—468.440

Stats. Implemented: ORS 468.4233 & 468.437 to ORS 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; 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

Wastewater Hardship Grant Program

340-054-0085

Wastewater Hardship Grant Program

~~(1) OAR 340-054-0087 through 340-054-0097 implement the Wastewater Hardship Grant Program under ORS 468.423 through 468.440, the Water Pollution Control Revolving Fund. Grants are only available when EPA allocates hardship grant funds to the Department.~~

~~(2) When such funds are made available, wastewater hardship grants may be awarded to public agencies in combination with Clean Water State Revolving Fund loans for sewage treatment facility improvements in low income, high unemployment, rural communities. Technical assistance is also an option of the program for eligible communities.~~

~~Stat. Auth.: ORS 468.423—ORS 468.440~~

~~Stats. Implemented: ORS 468.425-~~

~~Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97; DEQ 10-2003, f. & cert. ef. 5-27-03~~

340-054-0087

Definitions

~~As used in 340-054-0085 through 340-054-0097, the following definitions apply:~~

~~(1) "Community" is a group of more than one household.~~

~~(2) "EPOC" means the Environmental Partnerships for Oregon Communities Program of the Department.~~

~~(3) "Rural" means a community that is not, in whole or in part, within the limits of a city with a population of more than 3,000.~~

~~(4) "Self-help approach" means implementation of the program using a community's own human, material and financial resources to reduce the cost of the project.~~

~~Stat. Auth.: ORS 468.423—ORS 468.440~~

~~Stats. Implemented: ORS 468.423~~

~~Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97; DEQ 10-2003, f. & cert. ef. 5-27-03~~

340-054-0090

Applicant Eligibility

~~An applicant for Wastewater Hardship Grants must be a public agency that meets the following criteria:~~

~~(1) Is eligible for a CWSRF loan;~~

~~(2) Has a project on the program's project priority list in the current IUP;~~

~~(3) Is a rural community with a population of 3,000 or less;~~

~~(4) Has a per capita income of the residents served by the project equal to or less than 80% of the national per capita income of the United States during the same period, based on the last census report or a more recent survey acceptable to the Department;~~

~~(5) Has an unemployment rate of one or more percentage points above the annual unemployment rate for the United States, based on the last census report or a more recent survey acceptable to the Department; and~~

~~(6) Is without a centralized sewer collection or treatment system, or need improvements to on-site systems.~~

Stat. Auth.: ~~ORS 468.423—ORS 468.440~~

Stats. Implemented: ~~ORS 468.437~~

Hist.: ~~DEQ 19-1997, f. & cert. ef. 9-22-97; DEQ 10-2003, f. & cert. ef. 5-27-03~~

340-054-0093

Uses of Grant Funds

~~Grant funds may be awarded to public agencies that meet the eligibility requirements in OAR 340-054-0090 for the following projects that either improve public health or reduce an environmental risk.~~

~~(1) Grant funds may be used for the planning, design and construction of publicly owned treatment works and alternative wastewater systems. Grant-funded project costs must be eligible costs of wastewater system projects under the CWSRF program.~~

~~(2) Grant funds may be used for training, technical assistance and education programs relating to the operation and maintenance of wastewater systems. The primary purpose of technical seminars and other training must be to train eligible communities.~~

Stat. Auth.: ~~ORS 468.423—ORS 468.440~~

Stats. Implemented: ~~ORS 468.429~~

Hist.: ~~DEQ 19-1997, f. & cert. ef. 9-22-97; DEQ 10-2003, f. & cert. ef. 5-27-03~~

340-054-0095

Selection of Grantees

~~The Department will consider the following factors when awarding hardship grants.~~

~~(1) Total amount of grant funds available;~~

~~(2) Number of eligible applicants and the cost of proposed projects;~~

~~(3) Current economic status of the applicant community;~~

~~(4) Availability of other funding for the project, and affordability of the project without Wastewater Hardship Grant funds;~~

~~(5) Ability of the community to financially support the long-term operation, maintenance, and replacement costs of the project when completed;~~

~~(6) Use of the self-help approach to leverage the project;~~

~~(7) Community support for and involvement in the project;~~

~~(8) Technical assistance received from the Department through the Environmental Partnerships for Oregon Communities (EPOC) Program or through a comparable program that helps communities assess and prioritize multiple environmental mandates;~~

~~(9) Relative ranking of the project on the CWSRF Intended Use Plan's project priority list;~~

~~(10) Water quality benefits of the project, including receiving water body health, applicable watershed plans, applicable Total Maximum Daily Load allocations, salmon recovery efforts in the area, threatened and endangered species habitat in the area, groundwater management areas, and other environmental concerns; and~~

~~(11) Public health benefits of the project.~~

Stat. Auth.: ORS 468.423—ORS 468.440

Stats. Implemented: ORS 468.437

Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97; DEQ 10-2003, f. & cert. ef. 5-27-03

340-054-0097

Coordination with Clean Water State Revolving Fund Loans

~~(1) A CWSRF loan for at least 15% of the total grant and loan amount must be executed and loan funds disbursed in coordination with the grant moneys.~~

~~(2) The Department may award Wastewater Hardship grants without following the ranking on the PPL described in OAR 340-054-0025(4).~~

~~(3) The Department will determine the grant and loan funding split for a project based upon the grant funds available and the amount of grant assistance necessary to make the CWSRF loan affordable.~~

~~(4) The CWSRF loan annual fee will be assessed on only the loan portion of the grant and loan package. No annual fee will be assessed on the grant.~~

~~(5) The Department will maintain moneys for the Wastewater Hardship Grant program in accounts separate from the Clean Water State Revolving Fund.~~

Stat. Auth.: ORS 468.423—ORS 468.440

Stats. Implemented: ORS 468.433

Hist.: DEQ 19-1997, f. & cert. ef. 9-22-97; DEQ 10-2003, f. & cert. ef. 5-27-03

Funding under the 2009 American Recovery and Reinvestment Act (Act)

340-054-0098

Definitions

The following definitions apply to OAR 340-054-0098 through 340-054-0108:

~~(1) "Act" means the American Recovery and Reinvestment Act of 2009, Public Law 111-5, signed into law on February 17, 2009.~~

~~(2) "Principal forgiveness" means the portion of the total amount borrowed that is not required to be repaid.~~

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423—468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0100

Implementation within the ~~Clean Water State Revolving Fund~~CWSRF Program

- (1) OAR 340-054-0~~10098~~ through 340-054-0108 prescribe the use of Act funds through the ~~Clean Water State Revolving Fund~~ (CWSRF) ~~program~~ when such funds are available to the department.
- (2) When Act funds are available to the department, the department must award these funds ~~must be awarded to~~ public agencies in accordance with the Act and ~~are subject to~~ the requirements of the ~~CWSRF~~Clean Water State Revolving Fund.
- (3) All requirements for projects funded under the Act not specifically addressed in OAR 340-054-0~~10098~~ through 340-054-0108 are subject to 340-054-000~~54~~ through 340-054-0065.

Stat. Auth.: ORS 468.020 ~~&and~~ ORS 468.440

Stats. Implemented: ORS 468.423 ~~to~~ ORS 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0102

Project Eligibility under the Act

- (1) Eligibility for funding under the Act is the same as prescribed in OAR 340-054-0015~~(4)~~ except planning, as defined in 340-054-0010(~~2238~~), is not eligible.
- (2) The acquisition of land for any purpose, or the development or purchase of an easement are not eligible under the Act.

Stat. Auth.: ORS 468.020 ~~&and~~ ORS 468.440

Stats. Implemented: ORS 468.423 ~~to~~ ORS 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0104

Use of Funds, ~~and~~ Intended Use Plan under the Act

- (1) Funding purpose. Notwithstanding OAR 340-054-00~~1120~~, funding provided under the Act may be used only for the following CWSRF purposes:

- (a) To make loans, or purchase bonds;
- (b) To pay CWSRF program administration costs to the extent allowed by federal law;
- (c) To earn interest on fund accounts.

- (2) Loan ~~increases~~. Notwithstanding OAR 340-054-00~~3625(6)(c)~~, the department will only provide loan increases using Act funding ~~will only be made~~ to loans funded by the Act and only to the extent consistent with OAR 340-054-0106.

- (3) Existing loan agreement. A borrower with a loan agreement executed prior to October 1, 2008 is not eligible to receive funding under the Act for a project as described and funded under that existing loan agreement.

(4) Loan reserve. Notwithstanding OAR 340-054-00~~365(2)(c)(B)~~, the required reserve of any individual loan cannot be funded with CWSRF loan proceeds provided from the Act.

(5) Intended Use Plan ~~-(IUP)-~~:

(a) A project must be listed in the ~~Intended Use Plan~~IUP to be eligible for funding under the Act.

(b) Notwithstanding OAR 340-054-0025~~(3)(b)(5)(d)~~, the department must provide at least 14 days for public comments on ~~the a proposed~~ draft ~~Intended Use Plan~~IUP.

Stat. Auth.: ORS 468.020 ~~&and ORS~~ 468.440

Stats. Implemented: ORS 468.423 ~~-to ORS~~ 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0106

Allocation of Act Funds

Notwithstanding OAR 340-054-00~~3625(6)~~, funds made available by the Act must be allocated as follows:

(1) Funding of applicants. Funds will be offered to an applicant on the project priority list in rank order, subject to eligibility. A project is not eligible unless all required documentation is complete and appropriate environmental review, including any required notice and opportunity for public comment, has been completed at the time the department finalizes the intended use plan.

(2) Applicant's funding limit. The department will determine the amount of funding to be provided to an applicant, but the amount of any loan may not exceed \$5 million per applicant, except as provided in section (3) of this rule.

(3) Allocation of remaining funds. If there are no applicants on the project priority list eligible for a loan under the Act, a borrower that has received partial funding under the Act may be allocated additional funding. The department may allocate the remaining funds to a borrower based on rank order not to exceed 25 percent of the remaining funds or \$2 million, whichever is greater.

(4) Green ~~P~~project ~~R~~reserve. The department must establish a green project reserve with 20 percent of the funding received under the Act for projects to address green infrastructure, water or energy efficiency improvements or other environmentally innovative activities. If the department determines and certifies there are insufficient eligible projects for funding under this reserve, the reserve may be allocated to other eligible projects under the Act.

(5) Funding categories. Funds available under the Act may not be used to establish ~~an Expedited Loan reserve~~, a ~~S~~small ~~C~~community reserve or a ~~P~~planning reserve.

Stat. Auth.: ORS 468.020 ~~&and ORS~~ 468.440

Stats. Implemented: ORS 468.423 ~~-to ORS~~ 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

340-054-0108

Financial Terms

Notwithstanding OAR 340-054-0065, the following financial terms apply to any loan funded under the Act.

(1) Interest rates. ~~The department may provide A~~a loan ~~may be provided~~ at a zero percent interest rate.

(2) Principal forgiveness.

- (a) A loan made by the department to a ~~small community as defined in OAR 340-054-0010(48)~~public agency serving a population of 5,000 or less must include 75 percent principal forgiveness on the total amount borrowed.
- (b) A loan made by the department to a public agency serving a population greater than 5,000~~All other loans~~ must include 50 percent principal forgiveness on the total amount borrowed.
- (c) Principal forgiveness is granted upon execution of the loan agreement.

Stat. Auth.: ORS 468.020 ~~&and ORS~~ 468.440

Stats. Implemented: ORS 468.423 ~~-to ORS~~ 468.440

Hist.: DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09; DEQ 7-2009, f. & cert. ef. 10-28-09

Summary of public comment and agency responses

Title of proposal: Clean Water State Revolving Fund Program Rules update

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

Date: Oct. 5, 2012

**Comment
period**

DEQ opened a public comment period Aug. 1, 2012, and closed it 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.

Summary of comments and agency responses	
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. <i>Commenter 1</i>
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. <i>Commenter 1</i>
Response	DEQ acknowledges these comments in support of the proposed rule objectives.

Comment 3	<p>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.</p> <p><i>Commenter 1</i></p>
Response	<p>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 Clean Water State Revolving Fund 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.</p> <p>No changes were made to the proposed rules in response to this comment.</p>
Comment 4	<p>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.</p> <p><i>Commenter 1</i></p>
Response	<p>The proposed rules added a definition for "public agency" [OAR 340-054-0010(26)] to clarify who may apply for a Clean Water State Revolving Fund 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.</p>
Comment 5	<p>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.</p> <p><i>Commenter 1</i></p>
Response	<p>DEQ agrees that monitoring water quality benefits of funded projects provides valuable information for the program. Water quality permitted projects receiving Clean Water State Revolving Fund 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.</p> <p>The proposed project ranking criteria in OAR 340-054-0026, Table 1, address water quality standards, public health considerations, and watershed benefits. DEQ relies</p>

	<p>on the ranking criteria and the Intended Use Plan to prioritize projects for funding.</p> <ul style="list-style-type: none"> • No changes were made to the proposed rules in response to this comment.
Comment 6	<p>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.</p> <p><i>Commenter 1</i></p>
Response	<p>The federal Clean Water Act requires state Clean Water State Revolving Fund 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.</p> <p>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 Clean Water State Revolving Fund 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 program for available funding throughout the year.</p> <ul style="list-style-type: none"> • No changes were made to the proposed rules in response to these comments.
Comment 7	<p>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."</p> <p><i>Commenter 2</i></p>
Response	<p>Stormwater improvements are eligible for Clean Water State Revolving Fund 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:</p> <ul style="list-style-type: none"> • OAR 340-054-0010(9), (17), (21), (22)(a) and (27)(a) • OAR 340-054-0022(3)(e) • OAR 340-054-0060(17)(a)

	<ul style="list-style-type: none"> • OAR 340-054-0065(2)(b)(A) <p>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).</p>
Comment 8	<p>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?</p> <p><i>Commenter 2</i></p>
Response	<p>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).</p>
Comment 9	<p>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.</p> <p><i>Commenter 2</i></p>
Response	<p>DEQ acknowledges these comments in support of the proposed rule language.</p>
Comment 10	<p>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.</p> <p><i>Commenter 2</i></p>
Response	<p>DEQ acknowledges these comments in support of the proposed rule language.</p>
Comment 11	<p>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 <i>and</i> to make sure that the municipality does not exceed a practical financial burden to its citizens.</p> <p>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.</p> <p><i>Commenter 3</i></p>
Response	<p>The proposed rules reflect the Clean Water State Revolving Fund Advisory</p>

	<p>Committee's discussions that focused on technical program topic areas and financial provisions that impact affordability.</p> <p>DEQ acknowledges how critical it is to ensure the 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 Clean Water State Revolving Fund program assistance to communities.</p> <p>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.</p> <p>DEQ intends to address these concerns with the Clean Water State Revolving Fund 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 Clean Water State Revolving Fund 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.</p> <ul style="list-style-type: none"> • No changes were made to the proposed rules in response to these comments.
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<i>List of commenters and reference numbers</i>				
Reference Number	Name	Organization	City	Date on comments
1	Tribal Council Chair 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

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Sept. 5, 2012

To: Environmental Quality Commission

From: Larry McAllister, DEQ - Headquarters

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of proposal: Clean Water State Revolving Fund Program Rules update
Hearing date and time: Tuesday, Sept. 4, 2012, 3 p.m.
Hearing location: This hearing took place simultaneously in three locations via a conference call:

Shanna Bailey, DEQ, Presiding Officer
McKay Creek Conference Room
Suite 227, 700 SE Emigrant
Pendleton, OR 97801

Bob Haberman, DEQ, Presiding Officer
Willamette Conference Room
165 East 7th Avenue, Suite 100
Eugene, OR 97401

Larry McAllister, DEQ, Presiding Officer
EQC-A Conference Room
811 SW Sixth Avenue
Portland, OR 97204

DEQ convened the rulemaking hearing at 3 p.m. The Pendleton and Eugene offices connected by speakerphone to the Portland office where DEQ staff were prepared to record attendee comments. Manette Simpson, program coordinator, attended the hearing from the Portland office where she was prepared to provide an informal information session prior to the formal hearing.

There were no attendees at the hearing at any of the three DEQ offices

DEQ closed the public hearing at 3:38 p.m.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Sept. 5, 2012

To: Environmental Quality Commission

From: Todd Hesse, DEQ - Bend

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of proposal: Clean Water State Revolving Fund Program Rules update
Hearing date and time: Sept. 5, 2012, 3 p.m.
Hearing location: Bend DEQ office, 475 NE Bellevue Dr., Suite 110,
Bend, OR 97701

DEQ convened the rulemaking hearing at 3 p.m. and closed it at 3:32 pm. No one attended the hearing.

State of Oregon
Department of Environmental Quality

Memorandum

Presiding Officer's Report

Date: Sept. 6, 2012

To: Environmental Quality Commission

From: Andy Ullrich, DEQ - Medford

Subject: Presiding Officer's Report for Rulemaking Hearing
Title of proposal: Clean Water State Revolving Fund Program Rules update
Hearing date and time: Sept. 6, 2012, 3 p.m.
Hearing location: Medford DEQ office, 221 Stewart Avenue, Suite 201,
Medford, OR 97501

DEQ convened the rulemaking hearing at 3 p.m. and closed it at 3:31 pm. No one attended the hearing.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Relationship to Federal Requirements

RULE CAPTION

This rulemaking will amend existing program rules that regulate awarding financial assistance to public agencies for water quality improvement projects.

Answers to the following questions identify how the proposed rulemaking relates to federal requirements and the justification for differing from, or adding to, federal requirements. This statement is required by OAR 340-011-0029(1).

1. Is the proposed rulemaking different from, or in addition to, applicable federal requirements? If so, what are the differences or additions?

DEQ administers the Clean Water State Revolving Fund loan program under the federal Clean Water State Revolving Fund program authorized by Title VI of the Clean Water Act. This proposed rulemaking will amend the existing Clean Water State Revolving Fund administration rules under OAR Chapter 340, Division 54.

The proposed amendments are not different from or in addition to Clean Water Act requirements. The Clean Water Act allows states flexibility in how federal program requirements are implemented. DEQ is exercising this flexibility through updating rule language and clarifying processes to improve DEQ's ability to provide financial assistance to public agencies for water quality improvement projects.

2. If the proposal differs from, or is in addition to, applicable federal requirements, explain the reasons for the difference or addition (including as appropriate, the public health, environmental, scientific, economic, technological, administrative or other reasons).

The proposed amendments are not different from or in addition to the Clean Water Act.

3. If the proposal differs from, or is in addition to, applicable federal requirements, did DEQ consider alternatives to the difference or addition? If so, describe the alternatives and the reason(s) they were not pursued.

The proposed amendments are not different from or in addition to the Clean Water Act. DEQ did not consider alternatives outside the Clean Water Act.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Chapter 340
Proposed Rulemaking
STATEMENT OF NEED AND FISCAL AND ECONOMIC IMPACT

This rulemaking will update current Clean Water State Revolving Fund program rules for funding water pollution control activities.

This form accompanies a Notice of Proposed Rulemaking

Title of proposed rulemaking	Clean Water State Revolving Fund Program Rules Update, Oregon Administrative Rules, Chapter 340, Division 054.
Statutory authority or other legal authority	The Oregon Environmental Quality Commission has statutory authority under ORS 468.020 and 468.423 – 468.440.
Statutes implemented	The statutes implemented under these rules are ORS 468.423 – 468.440.
Need for the rule(s)	DEQ administers and implements the Clean Water State Revolving Fund program, which provides low-interest loans for the planning, design and construction of projects that achieve water quality protection and restoration benefits. This rulemaking would update and amend existing program rules to improve DEQ's ability to provide financial assistance to public agencies while ensuring long-term fund solvency of the revolving fund.
Documents relied upon for rulemaking	<p>The principal documents relied upon in preparing this rulemaking include:</p> <ul style="list-style-type: none"> • Clean Water Act, Title VI – State Water Pollution Control Revolving Funds • 40 CFR Part 35 – State Water Pollution Control Revolving Funds • U.S. EPA guidance and policy memos for the CWSRF program • Oregon Administrative Rules, Chapter 340, Division 54 • Oregon Revised Statutes 468.423 – 468.440. • CWSRF Advisory Committee Recommendations Report <p>Copies of the documents relied upon in the development of this rulemaking proposal can be reviewed at the Department of Environmental Quality's office at 811 SW 6th Avenue, Portland, Oregon 97204.</p>
Requests for other options	Pursuant to ORS 183.335(2)(b)(G), DEQ requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.
Fiscal and economic impact, statement of cost compliance	
Overview	<p>DEQ administers and implements the CWSRF program by offering loans to public agencies, including federally recognized Indian tribal governments, cities, counties, sanitary districts, special districts, soil and water conservation districts and certain intergovernmental entities, to assist in addressing both point and nonpoint sources of water quality pollution. Eligible projects range from major rehabilitation of municipal wastewater treatment facilities to stream bank restoration.</p> <p>Funding for the program is based on annual capitalization grants from EPA, state matching grants and repayment of loans. Annual fees are assessed on loans that DEQ uses to administer and implement the program. The fund is a primary source of low-interest funding for projects that protect or improve the quality of Oregon's waters. The program offers loans for project planning, design and construction at below-market interest rates. Oregon communities, especially small communities, rely upon the low-interest loans to fund needed water quality protection and improvement projects.</p>

	<p>The last major program rulemaking was in 2003. This proposed update to CWSRF program rules would improve DEQ's ability to provide financial assistance to public agencies and ensure a fair, objective and transparent funding process by:</p> <ul style="list-style-type: none"> • Updating project eligibility rule language to allow more types of water quality protection and improvement projects, such as enhancing stormwater management or incorporating sustainable practices. • Updating project ranking criteria to focus on projects that provide multiple benefits for water quality, including sustainable practices, assist small communities and encourage communities to maintain compliance. • Standardizing the scoring system to a Likert scoring system with one to five points for all questions and weighted points for specific questions. • Revising the definition of small community from 5,000 or less to 10,000 or less population, which would allow more Oregon communities to apply for funds in the Small Community Reserve. • Providing principal forgiveness, when available, to small communities with less than statewide median household income. • Clarifying who is eligible for a loan by incorporating the Oregon Revised Statute definition of "public agency." <p>The proposed rulemaking will impact DEQ's CWSRF program financially by incorporating lower loan interest rates and reducing the annual fee on the unpaid loan balance for a period of two years. These changes will benefit communities and will not impact DEQ's ability to effectively administer and implement the CWSRF program. DEQ's main program objective is having the fund continue to increase over time while maintaining a balance between providing public agency financing affordability and long-term fund solvency.</p>
Impacts on the general public	<p>The adoption of the proposed rules will have no direct economic impact on the general public, as only public agencies are eligible to borrow funds.</p> <p>There may be indirect economic impacts to individuals located in public agency service areas where projects are funded through the CWSRF program, since those projects may affect sewer or other service rates. The proposed lower interest rates on new loans and the proposed two-year annual fee reduction may indirectly benefit individual ratepayers if the public agency either maintains current service rates or delays rate increases.</p> <p>In addition, there are positive environmental benefits for the citizens of Oregon resulting from projects that protect and improve water quality for human health, wildlife, and aquatic life in Oregon's watersheds.</p>
Impacts to small business (50 or fewer employees – ORS183.310(10))	<p>The adoption of the proposed rules will have no direct economic impact to small businesses because they are not eligible to borrow CWSRF funds.</p> <p>There may be indirect economic impacts to small businesses located in public agency service areas where projects are funded through the CWSRF program, since those projects may affect sewer or other service rates. The proposed lower interest rates on new loans and the proposed two-year annual fee reduction may indirectly benefit small business ratepayers if the public agency either maintains current service rates or delays rate increases.</p> <p>Construction-related or stream restoration-related businesses may indirectly benefit from CWSRF-funded construction or restoration projects if public agencies contract for their services. For example, \$1,000,000 of stream restoration project work can create 15 to 20 jobs.</p>

Cost of compliance on small business (50 or fewer employees –ORS183.310(10))	a) Estimated number of small businesses subject to the proposed rule	None. Small businesses are not eligible to borrow CWSRF funds. An indirect cost savings may occur if the business is in a public agency service area and is a ratepayer.
	b) Types of businesses and industries with small businesses subject to the proposed rule	None. Small businesses are not eligible to borrow CWSRF funds.
	c) Projected reporting, recordkeeping and other administrative activities required by small businesses for compliance with the proposed rule, including costs of professional services	None. Small businesses are not eligible to borrow CWSRF funds.
	d) The equipment, supplies, labor, and increased administration required by small businesses for compliance with the proposed rule	None. Small businesses are not eligible to borrow CWSRF funds.
	e) A description of the manner in which DEQ involved small businesses in the development of this rulemaking	DEQ did not involve small businesses in this rulemaking as they are not directly affected by the CWSRF loan program.
Impacts on large business (all businesses that are not “small businesses” under ORS183.310(10))	<p>The adoption of the proposed rules will have no direct economic impact to large businesses because they are not eligible to borrow CWSRF funds.</p> <p>There may be indirect economic impacts to large businesses located in public agency service areas where projects are funded through the CWSRF program, since those projects may affect sewer or other service rates. The proposed lower interest rates on new loans and the proposed two-year annual fee reduction may indirectly benefit large business ratepayers if the public agency either maintains current service rates or delays rate increases.</p> <p>Construction-related or stream restoration-related businesses may indirectly benefit from CWSRF funded construction or restoration projects if public agencies contract for their services. For example \$1 million of stream restoration project work can create 15 to 20 jobs.</p>	
Impacts on local government	<p>The proposed rules will economically benefit local governments. Local governments are primary borrowers of CWSRF loans. For the purpose of the CWSRF program, local governments include cities, counties, sanitary districts, special districts, soil and water conservation districts, federally recognized tribal governments and certain intergovernmental entities.</p> <p><u>Lowering loan interest rates.</u> Interest rates are an important tool for financing affordability. Lower loan interest rates mean water quality improvement projects are more affordable for all communities, especially smaller or rural communities. Communities may be able to maintain current service rates or slow rate increases to individual ratepayers due to lower interest rates.</p> <p><u>Reducing the annual fee account balance.</u> Temporarily reducing the annual fee from 0.5 percent to 0.25 percent for two years benefits local governments that are current borrowers.</p>	
Impacts on state agencies other than DEQ	The proposed rules are not expected to have an impact on other state agencies except for the Department of Land Conservation and Development. DLCD staff evaluates the environmental impacts of projects receiving CWSRF funding. DLCD staff workload could increase if the proposed lower interest rates result in additional funded projects.	

Impacts on DEQ	<p>The CWSRF fund is self-sustaining in terms of administration and program costs. The proposed rules will have two limited fiscal impacts to the CWSRF program but none to other DEQ programs. The growth of the overall program fund will slow down over time from lower interest rates and the annual fee account balance will be reduced over time.</p> <p><u>Lowering loan interest rates.</u> 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. Lowering interest rates means the total CWSRF available funds will not increase as quickly over time as they have in the past, which will reduce future available funds. However, new borrowers will benefit from lower interest rates, making loans more affordable.</p> <p><u>Reducing the annual fee account balance.</u> DEQ currently assesses an annual fee of 0.5 percent on the outstanding loan principal balance. Fees are deposited to a separate account and are dedicated for CWSRF program administration expenses such as salaries, services, supplies and indirect costs. Over time, the annual fee account balance has increased and is currently approximately \$6.5 million. State statute doesn't allow these funds to be transferred or used for any other purpose.</p> <p>The proposed rule will benefit borrowers who are assessed an annual fee by temporarily reducing the annual fee from 0.5 percent to 0.25 percent and then returning the fee to 0.5 percent after two years. The reduction is intended to reduce the account balance to a projected level that DEQ needs to administer and implement the program.</p> <p>There are currently 140 borrowers in repayment. Revenue collected over two years with 0.5 percent annual fee is projected to be \$3,038,254. Revenue collected over two years with 0.25 percent annual fee is projected to be \$1,519,127. The temporary fee reduction plus normal program expenses are expected to decrease the annual fee account balance from \$6.5 million to \$4 million over the two-year period. The proposed temporary reduction will not impact DEQ's ability to administer the program.</p>
Assumptions	<ul style="list-style-type: none"> • The federal capitalization grant will continue to be awarded. • The number of new loans will continue to gradually increase. • Repayment on loans will continue to gradually increase.
Housing costs	<p>DEQ has determined that this proposed rulemaking will have no effect on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single family dwelling on that parcel.</p> <p>There may be indirect economic impacts if a dwelling is located in public agency service areas where projects are funded through the CWSRF program, since those projects may impact sewer or other service rates. The proposed lower interest rates on new loans and the proposed two-year annual fee reduction may indirectly benefit individual ratepayers if the public agency either maintains current service rates or delays rate increases.</p>
Administrative rule advisory committee	<p>DEQ convened a diverse, statewide Clean Water State Revolving Fund Advisory Committee in May 2011, and the committee provided DEQ with recommendations on updating the CWSRF administrative rules. The committee discussed possible economic impacts to the CWSRF fund and communities of lowering interest rates and providing financial affordability for large and small communities.</p> <p>The committee agreed the best approach to reducing the annual fee account balance would be through a temporary reduction in the annual loan fee. They wanted the reduction to benefit</p>

communities that are assessed this fee during loan repayments and to ensure DEQ has adequate funds to administer and implement the CWSRF loan program, now and in the future.

The Statement of Need and Fiscal and Economic Impact was presented and discussed by the committee on March 15, 2012.

Manette Simpson
Prepared by

Manette Simpson
Printed name

7/11/12
Date

J. R. Roys
Approved by DEQ Budget Office
7/11/12

Jim Roys, Financial Services Manager
Printed name

7/12/12
Date

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
Land Use Evaluation Statement

Rulemaking Proposal
for
Clean Water State Revolving Fund Rule Amendments

RULE CAPTION

This rulemaking will amend current program rules that regulate awarding financial assistance to public agencies.

1. Explain the purpose of the proposed rules.

The proposed Clean Water State Revolving Fund rule amendments will improve DEQ's ability to provide financial assistance to public agencies that have diverse water quality improvement project needs, provide clarity about the loan program's funding process and ensure long-term solvency of the revolving fund.

Proposed rule amendments will:

- Broaden current project eligibility rules to include more types of water quality improvement projects that can receive program funding.
- Align project ranking criteria more closely with DEQ's water quality program priorities.
- Shift project emphasis from compliance/non-compliance to proactive improvement, restoration and maintenance of water quality.
- Encourage projects to integrate sustainable and "green" components with "gray" infrastructure.
- Add new project planning criteria to encourage planning efforts.
- Develop a consistent, standardized scoring system.
- Eliminate the Expedited Loan Reserve, since this reserve has never been used.
- Increase the initial maximum planning loan amount from \$150,000 to \$250,000.
- Revise the definition of a small community, from 5,000 or less to 10,000 or less population, and increase the Small Community Reserve from 15 percent of total available funds to 25 percent.
- Reduce the annual fee account balance, used for administering the program, through a temporary two-year fee reduction.
- Reduce interest rates for all communities, including lower interest rates for small communities with less than statewide median household income.
- Award principal forgiveness, when available, for planning and design and construction loans on a priority basis – first to small communities with less than statewide median

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

2. Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination Program?

Yes X No _____

a. If yes, identify existing program/rule/activity:

Oregon Administrative Rule 340-018-0030(5)(b) identifies the approval of a state revolving loan application as one of DEQ's programs and actions determined to have significant effects on land use.

b. If yes, do the existing statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules?

Yes X No _____ (if no, explain):

An approved land use compatibility statement is required from a local government before a loan agreement is signed by DEQ.

c. If no, apply the following criteria to the proposed rules.

This section is not applicable.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

Not applicable.

3. If the proposed rules have been determined a land use program under question two above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures DEQ will use to ensure compliance and compatibility.

Not applicable.