
Date: April 7, 2010
To: Environmental Quality Commission
From: Dick Pedersen, Director
Subject: Agenda item C, Temporary rule adoption: Clean Water State Revolving Fund, use of federal funds
April 29-30, 2010 EQC meeting

Why this is important Recent federal legislation necessitates amendment of administrative rules for the Oregon Department of Environmental Quality's Clean Water State Revolving Fund loan program to incorporate the requirements of the 2010 Appropriation Act. On Oct. 20, 2009, President Obama signed the act, which authorized federal funds for the Clean Water State Revolving Fund loan program nationally during federal fiscal year 2010. The appropriation is provided to states each year as a capitalization grant. The 2010 Appropriation Act requires that a portion of the grant be used to provide "additional subsidization" and for funding of "green projects." A temporary rulemaking is required to ensure the necessary amendments are incorporated in rule so DEQ can apply for and receive the 2010 capitalization grant of \$23 million before the end of the federal fiscal year on Sept. 30, 2010.

DEQ recommendation and EQC motion DEQ recommends that the Oregon Environmental Quality Commission adopt the proposed temporary rule revisions to OAR Chapter 340, Division 54, as presented in attachment A and the findings in attachment B.

Background and need for rulemaking DEQ administers Oregon's Clean Water State Revolving Fund loan program with the support of an annual capitalization grant from the U.S. Environmental Protection Agency. DEQ's current administrative rules do not allow for additional subsidization or funding of green projects required by the 2010 Appropriation Act. Based on the provisions of the act, at least \$3.4 million of the \$23 million capitalization grant must be provided as additional subsidization and \$4.6 million must be set aside to fund green projects in Oregon. DEQ intends to provide the additional subsidization in the form of principal forgiveness. Without the proposed rule amendments, DEQ is not eligible to receive the grant available from EPA.

DEQ intends to incorporate the proposed amendments to Division 54 required by the 2010 Appropriation Act as long-term, program-wide regulations.

Effect of rule This rulemaking would amend OAR 340-054-0025 and OAR 340-054-0065 to establish a green project reserve and allow additional subsidization, respectively, as required by the 2010 Appropriation Act. These rule revisions will define the allowable uses of the funds, the types of eligible projects and activities, the

allocation of the funds and specific financial terms. A minor clarifying edit is being proposed to include a definition for principal forgiveness in OAR 340-054-0010.

Commission authority EQC has authority to take this action under Oregon Revised Statutes 468.020 and 468.423 - 468.440.

Stakeholder involvement DEQ convened a financial workgroup representing the Oregon Business Development Department, USDA's Rural Development, special districts and large and small communities. The workgroup discussed options for providing additional subsidization as required by the 2010 Appropriation Act. All applicants currently listed on the program's intended use plan were informed through postal and electronic mail of the additional funding and financial incentives anticipated from the 2010 Appropriation Act.

Public comment To ensure timely adoption of rule amendments to qualify for the 2010 Clean Water State Revolving Fund capitalization grant, DEQ did not hold public hearings since public comment is not required for a temporary rulemaking. DEQ will gather public comments as part of the permanent rulemaking scheduled to follow this temporary rulemaking for proposed adoption at the October 2010 EQC meeting.

Key issues DEQ will provide the minimum level of subsidization required by the 2010 Appropriation Act through principal forgiveness for eligible projects. Offering the minimum level of subsidization allows DEQ to comply with federal requirements and still maximize the growth of the Clean Water State Revolving Fund loan program resulting in the greatest level of project funding.

To address the new subsidization requirement of the 2010 Appropriation Act, DEQ proposes to base eligibility for principal forgiveness for point source control projects on a community's median household income. This is a new process for DEQ's loan program. DEQ modeled this approach on procedures used successfully by the Oregon Business Development Department to fund projects under the Drinking Water State Revolving Fund. This approach is not as useful for nonpoint source control project applications, so the proposed amendments allow nonpoint source control or estuary management projects to be eligible for principal forgiveness without having to address median household income thresholds.

Principal forgiveness will be provided to applicants according to allocation procedures in OAR 340-054-0025(6). Unlike the funds provided by the American Recovery and Reinvestment Act of 2009 that were only available to new projects, principal forgiveness provided by these proposed amendments will be offered as

increases to existing loans, as the program currently provides, and then to new projects.

Next steps

If EQC adopts these proposed rules at the April 29-30, 2010, meeting, these temporary rules will be filed with the Secretary of State's office and Legislative Council in early May, at which time the rule amendments will become effective.

DEQ will produce an updated Clean Water State Revolving Fund intended use plan that indicates how principal forgiveness will be allocated to projects and which projects are expected to qualify as green projects. DEQ will make the draft plan available for public comment for thirty days. After comments are considered, DEQ will finalize the plan and submit the capitalization grant application to EPA in early June 2010. DEQ expects the 2010 capitalization grant funds to be available for loans by early September 2010.

If adopted, the temporary rules will expire within 180 days. A permanent rulemaking effort will begin in early summer 2010 to ensure the temporary amendments are permanently incorporated in the Clean Water State Revolving Fund loan program. The permanent rulemaking will include an opportunity for public comment.

Attachments

- A. Redlined version of proposed rule revisions
- B. Statement of need and justification
- C. Financial workgroup membership

Available upon request

- 1. H.R. 2996 – Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

Approved:

Section: _____

Division: _____

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DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 54

CLEAN WATER STATE REVOLVING FUND PROGRAM

340-054-0010

Definitions

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

- (1) "Allocation Cycle" means the funding cycle as determined by the Department.
- (2) "Applicant" means an eligible Clean Water State Revolving Fund (CWSRF) applicant.
- (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.
- (4) "Borrower" means a CWSRF loan recipient.
- (5) "Change Order" means a written order and supporting information from the Borrower to the 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.
- (6) "Checklist of Exhibits and Requirements" means the most recent version of the list of all the exhibits and required documents that must be submitted in conjunction with the CWSRF application and then be reviewed and approved by the Department before a loan agreement is executed.
- (7) "Clean Water Act" means the federal Clean Water Act, 33 USC §1251 - §1387.
- (8) "Clean Water State Revolving Fund" or CWSRF means the Water Pollution Control Revolving Fund established under ORS 468.427.

(9) "Collector Sewer" means that portion of the public sewerage 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.

(12) "Construction" means the erection, installation, expansion or improvement of sewage facilities, nonpoint source control and estuary management projects.

(13) "Default" means nonpayment by the Borrower of the principal or interest amount of a CWSRF loan on the payment's due date, failure to comply with the terms or conditions of the CWSRF loan, a formal bankruptcy filing or other written admission of inability to pay CWSRF obligations.

(14) "Department" means the Oregon Department of Environmental Quality.

(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.

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

(20) "Estuary Management" means the implementation of actions identified in a Comprehensive Conservation Management Plan.

- (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.
- (29) "Local Community Loan" means a loan to a public agency that will then be used by the public agency to establish a local financial program to address estuary management efforts or nonpoint source control activities.
- (30) "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 facility, nonpoint source control or estuary management project.
- (31) "Major Sewer Replacement and Rehabilitation" means the repair or replacement of interceptor or collector sewers.
- (32) "Nonpoint Source Control" means the implementation of a nonpoint source pollution management activity under section 319 of the Clean Water Act and 40 CFR § 35.3115(b) and included in the 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).

(35) "Operation" means the control of sewage collection system pumping stations and treatment unit processes within a sewage facility. Operation also means the control of equipment and processes of nonpoint source control and estuary management projects. 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.

(38) "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 facilities, nonpoint source control and estuary management projects intended to remediate an existing or anticipated water pollution problem, but excluding the preparation of detailed bid documents for construction.

(39) "Point Source" 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.

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

~~(4041)~~ "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.

~~(4142)~~ "Project" means the activities or tasks identified in the application or the loan agreement for which the Borrower may expend or obligate funds.

~~(4243)~~ "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 facility, nonpoint source control or estuary management project to maintain the facility or project for the purpose for which it was designed and constructed. Replacement does not mean the replacement of the facility or project at the end of its useful life.

~~(4344)~~ "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.

(4445) "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.

(4546) "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.

(4647) "Sewage Facility" means a sewage collection system or sewage treatment facility.

(4748) "Sewage Treatment Facility" means any publicly owned device, structure or equipment used to treat, neutralize, stabilize, reuse or dispose of wastewater and treatment residuals.

(4849) "Small Community" means a public agency serving a population of 5,000 or less.

(4950) "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.

(5051) "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.

(5152) "Sponsorship Option" means the Department's financing mechanism that allows a public agency's sewage collection system or sewage treatment facility project and a qualifying water resource activity to be financed through a single 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.

(5253) "Storm water" means water derived from rainfall, snowmelt or other storm events that flows across the ground's surface rather than infiltrating the ground.

(5354) "Surface Water" means streams, lakes, reservoirs, estuaries and the topographical features that define their volume.

(5455) "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.

~~(5556)~~ "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.

~~(5657)~~ "Wastewater" means waters carrying wastes from individual public or private structures combined with infiltration and inflow.

~~(5758)~~ "Wastewater Reuse" means a project that reuses treated effluent from a sewage treatment system, commercial, or industrial process and, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.

~~(5859)~~ "Water Pollution Control Revolving Fund" means the "CWSRF".

~~(5960)~~ "Water Quality Standards" means the standards established in OAR chapter 340, division 41 for surface waters and the minimum protection requirements established in OAR chapter 340, division 40 for groundwater.

~~(6061)~~ "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.

~~(6162)~~ "Waters of the State" means the same as defined in ORS 468B.005(8).

~~(6263)~~ "Wellhead Protection Area" has the meaning provided in OAR 340-040-0150(13).

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.423

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

340-054-0025

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

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 and 40 CFR ¼ 35.3150. The IUP will describe the proposed uses of the CWSRF and will include a project priority list 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) Applications: For a project to be considered for the project priority list, an Applicant must submit a completed application; 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.

(4) Project Priority List Ranking:

(a) The Department will develop a project priority list by ranking all eligible proposed projects using the criteria in Table 1 of this rule. 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.

(b) The Department will 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 ~~three~~four reserves in accordance with the criteria in sections (6)(c)(A), (6)(c)(B) ~~and~~ (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), ~~and~~ (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. This reserve will be maintained to specifically fund green infrastructure, water or energy efficiency improvements, and other environmentally innovative activities.

~~(DE)~~ 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.

~~(EF)~~ 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.

(7) Project Priority List Modification:

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

(A) Ranked projects may remain on the project priority list for up to 36 months while pursuing funding. After 36 months, the Department will notify the Applicant in writing that the project is being removed from the 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 applicants requesting to remain on the list beyond the 36 month limit. Applicants requesting an extension must submit a progress report indicating the status of their effort in pursuing CWSRF financing and an updated time frame indicating when they expect to have completed all requirements necessary to be awarded funding.

(D) The Department may remove a project from the project priority list upon written notice to the applicant at any time the Department determines that the project does not meet eligibility requirements, the Borrower no longer requires CWSRF financing or the Applicant requests removal.

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 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

340-054-0065

Loan Terms and Interest Rates

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

(1) 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 Borrower, which is supported by the Borrower's unlimited ad valorem taxing power.

(b) A loan secured by a bond or other obligation of the Borrower that is not subject to appropriation and 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 Revenue Secured Loan that complies with section (2) of this rule.

(d) An Alternative Loan that complies with section (3) of this rule.

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

(2) Revenue Secured Loans. 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 the Borrower; the obligation to pay may not be subject to the appropriation of funds.

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

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

(B) All debt service.

(C) All other financial obligations (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 Borrower from subsection (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 a reserve provision requiring the Borrower to maintain a pledged reserve that is dedicated to the payment of the CWSRF loan and meets the following requirements:

(A) The loan reserve must be maintained in an amount that is at least equal to the product of the reserve percentage shown in subsection (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 (d) of this section must correspond to the coverage factor selected for the CWSRF loan.

(B) Loan reserves may be funded with cash of the Borrower, a letter of credit, repayment guaranty or other third party commitment to advance funds that is satisfactory to the Department. If the Department determines that funding of the reserve as described above imposes an undue hardship on the Borrower, the Department may allow reserves to be funded with CWSRF loan proceeds.

(d) Comply with the one of the following sets of coverage factors and reserve percentages:

Coverage Factor*--Reserve Percentage**

Option 1: 1.05:1--100%

Option 2: 1.15:1--75%

Option 3: 1.25:1--50%

Option 4: 1.35:1--25%

*Net Income to Debt Service

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

(e) Include a requirement for 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 Borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. The Department may determine that failure to adjust rates does not constitute a default if the Borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system that produces the revenues.

(g) Include a requirement that if the reserve account is depleted for any reason, the 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 Borrower.

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

(3) Alternative Loans. The Department may authorize Alternative Loans for reasonable alternative methods of financing if the Borrower demonstrates to the satisfaction of the Department that:

(a) It may be unduly burdensome or costly to the Borrower to borrow 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.

(b) The Alternative Loan has a credit quality that is substantially equal to, or better than, the credit quality of a Revenue Secured Loan to that Borrower. In determining whether an Alternative Loan meets the requirement, the Department may consult with a financial advisor and may charge the Applicant the reasonable costs of such consultation.

(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.

(5) Interest Rates:

(a) Base rate. The base rate used in computing the interest rates on all direct loans for a quarter will be based on the 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, H.15." This entry is quoted by the Federal Reserve from the "Bond Buyer Index" for general obligation bonds (20 years to maturity, mixed quality).

(b) Planning Loans. The interest rate for planning loans will be equal to 25% of the base rate.

(c) Local Community Loans. The interest rate for local community loans will be equal to 50% 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);

(g) All Other Direct Loans. Except as provided in OAR 340-54-0065(12), all other CWSRF Loans will be made at one of the following interest rates:

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

(B) 55% of the base rate (with a maximum repayment period of 10 years);

(C) 60% of the base rate (with a maximum repayment period of 15 years);

(D) 65% of the base rate (with a maximum repayment period of 20 years).

(h) Sponsorship option. When the sponsorship option is implemented in conjunction with a construction loan, the 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.

(i) Bond 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.

(6) Interest Accrual and Payment Periods. Interest accrual begins at the time of each loan disbursement from the CWSRF to the Borrower. All outstanding accrued interest will be included with each loan repayment.

(7) Annual Fee. The Borrower must pay the necessary and reasonable costs of administering the fund through the loan's Annual Fee. An annual fee of 0.5% of the unpaid balance will be charged on each loan, except planning loans, during the repayment period. This fee is due and payable in addition to the payments identified in the loan agreement's payment schedule.

(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.

(9) Commencement of Loan Repayment. Principal and interest repayments on loans will begin within one year of the date of Initiation of Operations or project completion, as determined by the Department.

(10) Loan Term. All loans must be fully repaid within 20 years of the date of Initiation of Operations or project completion, in accordance with a schedule determined by the Department. Generally, the loan repayment term will be no longer than the useful life of the assets financed and will be based on the Borrower's ability to pay.

(a) The loan term for planning loans will not exceed five years.

(b) The loan term for local community loans will not exceed ten years.

(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).

(f) 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 provided for in OAR 340-054-0065(12) of this rule.

(11) Minor Variations in Loan Terms. The Department may allow minor variations in the financial terms of loans described in this section to facilitate administration and repayment of loans.

(12) Leveraged Loans. The 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 a leveraged loan program with 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.

(B) 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% of the base rate.

(C) Loan fees for leveraged loans will not exceed the amount charged for direct loans of the same size and repayment period.

(D) Costs of 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.

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

(a) Principal forgiveness for a point source project. 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, sub-data such as census tract or block tract data will be used as a basis for calculating the applicant'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.

(B) Calculating the amount of principal forgiveness. For an applicant whose MHI is less than the statewide MHI, the applicant's MHI is multiplied by an affordability index and then the result is divided by twelve. 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 applicant is eligible. A projected sewer rate, reflecting the additional costs of the proposed project, must be submitted by the applicant and approved in writing by the department.

[Calculating the affordability index (AI): $AI = (1.25\% \times \text{the local MHI})$. Where 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 annually for inflation based on the Portland, Oregon consumer price index as listed by the Oregon Employment Department]

[Calculating the affordability rate (AR): $AR = (\text{Applicant's MHI} \times \text{affordability index})/12$]

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

(C) 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 will not exceed 75 percent of the loan amount or \$1 million, whichever is less.

(b) 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 amount of principal forgiveness offered to any one project may not exceed 30 percent of the loan amount or \$1 million, whichever is less.

(c) Principal forgiveness for a planning project. A planning project is eligible for principal forgiveness. The amount of principal forgiveness offered to any one planning project may not exceed 30 percent of the loan amount.

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 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

**DEPARTMENT OF ENVIRONMENTAL QUALITY
STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for filing temporary administrative rules accompanies this form.

Department of Environmental Quality

Agency and Division

OAR Chapter 340

Administrative Rules Chapter Number

Rule Caption: Clean Water State Revolving Fund, use of federal funds

In the Matter of: Clean Water State Revolving Fund program, Chapter 340, Division 54

Statutory Authority: ORS 468.020; ORS 468.423 - 468.440

Other Authority: FY 2010 Appropriation Act (Public Law 111-88)

Statutes Implemented: ORS 468.423 - 468.440

Need for the temporary rule(s): These temporary amendments to Division 54, the Clean Water State Revolving Fund program, are necessary to allow the program to incorporate the requirements the 2010 Appropriation Act that provides federal funding to DEQ's Clean Water State Revolving Fund loan program.

On Oct. 20, 2009, President Obama signed the 2010 Appropriation Act, which included funds for the 2010 Clean Water State Revolving Fund program nationally. The 2010 Appropriation Act requires that a portion of each state's capitalization grant be used for additional subsidization and funding of green projects. Oregon's 2010 capitalization grant is \$23,017,000 of which at least \$3.44 million must be provided in additional subsidization and \$4.6 million must be provided for green projects. DEQ's administrative rules must be amended to include these new requirements so the department can apply for and accept the capitalization grant. A temporary rulemaking is required to ensure the amendments are incorporated in rule in time to allow DEQ to receive the 2010 capitalization grant before the end of the federal fiscal year on Sept. 30, 2010.

Documents relied upon:

The documents listed below are available from the DEQ Water Quality Division, 811 SW Sixth Avenue, Portland, Oregon 97204. To make arrangements to review these documents call (503) 229-6412. These documents are also available online at <http://www.deq.state.or.us/wq/loans/loans.htm>

- The October 2009 Interior Appropriations Conference Summary (PDF)
- H.R.2996 – Making appropriations for the Department of the Interior, environment, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.
- Oregon Administrative Rules, Chapter 340, Division 54

Justification of temporary rule(s):

The commission finds that failure to adopt the temporary rule will result in serious prejudice to the public interest because it will have the following consequences:

The 2010 Appropriation Act provides DEQ with a \$23 million capitalization grant for the Clean Water State Revolving Fund program. The legislation requires that a portion of each state's capitalization grant be used for additional subsidization and for funding green projects. Amendments to DEQ's administrative rules are necessary to address these new requirements. Because those amendments need to be adopted before DEQ can apply for the capitalization grant, it is not feasible to amend the rules through a longer permanent rulemaking process and still apply for and accept the EPA capitalization grant before the end of the 2010 federal fiscal year.

Failure to receive and utilize Oregon's \$23 million capitalization grant due to a potentially prolonged permanent rulemaking process would constitute serious prejudice to the public interest. DEQ has identified enormous financial needs to improve the quality of the waters of the state. It would be a significant loss of resources to not be able to accept federal funds available to support improvements to Oregon's water quality.

Housing Cost Impacts:

DEQ has determined that this proposed temporary rulemaking will have no measurable impact 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.

*Dick Pedersen, Director
Oregon Department of Environmental Quality
(On Behalf of the Environmental Quality Commission)*

Date Signed

Financial Workgroup Membership

Temporary Rulemaking:

Clean Water State Revolving Fund, use of federal funds

January 2010

1. **Brett Arvidson** (Oak Lodge Sanitary District)
2. **Ray Bartlett** (Economic and Financial Analysis)
3. **Chris Eppley** (City of Keizer)
4. **Chris Marko** (Rural Community Assistance Corporation)
5. **Jeremy McVeety** (Oregon Business Development Department)
6. **Todd Miller** (Metropolitan Wastewater Management Commission –Eugene)
7. **Brian Otten** (USDA-Rural Utility Services)
8. **Doug Waugh** (Clackamas County Water Environmental Services)

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