

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 8, 2010

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item I, Rule adoption: Clean Water State Revolving Fund - Use of Federal Funds
October 20-22, 2010, EQC meeting

Why this is important In April 2010, the Oregon Environmental Quality Commission adopted temporary amendments to DEQ's Clean Water State Revolving Fund loan program administrative rules that incorporated the requirements of the federal 2010 Appropriation Act. This action allowed DEQ to apply for a \$23 million capitalization grant. The U.S. Environmental Protection Agency provides the appropriated funds to state revolving loan programs each year as a capitalization grant. This rulemaking will ensure the temporary amendments addressing the 2010 appropriation requirements become permanent.

DEQ recommendation and EQC motion DEQ recommends that EQC adopt the proposed permanent rule revisions to OAR Chapter 340, Division 54, as presented in attachment A.

Background and need for rulemaking DEQ administers Oregon's Clean Water State Revolving Fund loan program with the support of the annual capitalization grant from EPA. In October 2009, President Obama signed the 2010 Appropriation Act that authorized federal funds for the Clean Water State Revolving Fund loan program nationally.

DEQ's 2010 capitalization grant is \$23 million. The 2010 appropriation requires a portion of the capitalization grant be used to provide additional subsidization and funding for green projects. The adopted temporary rules require the additional subsidization be offered as principal forgiveness for qualifying loans. DEQ will offer at least \$3.4 million of the grant as additional subsidization and set aside \$4.6 million to fund green projects.

DEQ must develop an intended use plan to be eligible to receive any capitalization grant. DEQ's state fiscal year 2011 plan lists projects expected to receive principal forgiveness and projects expected to qualify for funding from the new green project reserve. In late August, DEQ finalized the 2011 Intended Use Plan, and EPA awarded the capitalization grant in September.

Effect of rule This rulemaking will amend OAR 340-054-0025 to establish a green project reserve and OAR 340-054-0065 to allow additional subsidization as required by

federal regulations. Please see attachment A for specific rule language. The rule revisions will define the allowable uses of the funds and the types of eligible projects. A minor, clarifying edit proposes a definition for principal forgiveness at OAR 340-054-0010(40).

Commission authority

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

Stakeholder involvement

During the temporary rulemaking, DEQ convened a financial workgroup that met twice in January 2010. The workgroup represented the Oregon Business Development Department, USDA's Rural Development, special districts, and large and small communities. The workgroup discussed options for providing additional subsidization and recommended offering principal forgiveness.

DEQ provided an initial notice in December 2009 to stakeholders and all applicants listed in the intended use plan of the additional funding and financial incentives anticipated from the 2010 Appropriation Act. DEQ sent out an additional notice in May 2010 after the temporary rules were adopted.

Public comment

DEQ accepted public comments on the rule revisions from June 30 through Aug. 9, 2010. DEQ notified interested parties by either email or U.S. mail and produced a news release that was available to communities statewide. DEQ also provided display ads in the newspapers serving Medford, Portland and Pendleton where public hearings were held in early August. No one attended the hearings, and two written comments were received by electronic mail.

Key issues

The proposed permanent rule ensures DEQ is able to use the 2010 capitalization grant in accordance with the federal appropriation requirements. DEQ expects future appropriations to include some level of subsidization and the green project reserve requirements. The proposed rule language will allow DEQ to address such requirements in future appropriations and apply for related capitalization grants.

Additional subsidization, as principal forgiveness

DEQ will provide the minimum level of additional subsidization, not less than 30 percent of the capitalization grant, required by the 2010 Appropriation Act. DEQ proposes to base eligibility on a community's median household income. Because median household income is not a useful measurement for all applicants, the amendments will allow nonpoint source control or estuary management projects to be eligible for principal forgiveness without having to address median income thresholds. Planning loans will also be eligible for principal forgiveness. DEQ will calculate the amount of principal forgiveness for nonpoint source, estuary management and planning loans based on a percentage of the loan amount. Principal forgiveness will be available as increases to existing loans.

Green project reserve

The rule revisions will establish a new financial reserve funded in an amount equal to 20 percent of the capitalization grant. DEQ will use this reserve to encourage green projects.

The rule revisions define a qualifying green project as that portion of a project determined to be green infrastructure, water or energy efficiency improvements and other environmentally innovative activities, in accordance with EPA's guidance. Unlike the small community or expedited reserves whose unused funds can be reallocated to the program's general fund, the green project reserve fund can only be used for green projects and cannot be transferred.

Next steps If EQC adopts the proposed rule revisions, DEQ will file the permanent rules with the Secretary of State's office and Legislative Council before the temporary rules expire on Oct. 29, 2010.

Attachments

- A. Proposed rule revisions
- B. Summary of public comments and agency responses
- C. Financial workgroup membership
- D. Presiding Officer's report on public hearings
- E. Relationship to federal requirements
- F. Statement of need and fiscal and economic impact
- G. Land use evaluation statement

Available upon request

- 1. Legal notice of hearing
- 2. Cover memorandum from public notice
- 3. Written comment received

Approved:

Section: _____

Division: _____

Report prepared by: Larry McAllister
Phone: 503-229-6412