



Oregon Department of Environmental Quality  
Oct. 14-15, 2015  
Oregon Environmental Quality Commission meeting  
Rulemaking, Action item L

Clean Water State Revolving Fund Rulemaking

**DEQ recommendation to the EQC**

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

## Overview

### Short summary

DEQ proposes administrative rule amendments to the Clean Water State Revolving Fund program related to 2014 federal amendments to the Clean Water Act. DEQ's amendments will align the program with federal changes and will do the following:

- Create longer financing terms available to all eligible borrowers, as authorized by House Bill 2451 [2015];
- Establish an increase in the amount of principal forgiveness available with an allocation process that maximizes the Fund's benefits to borrowers. Eligibility is limited to municipalities or intermunicipal, interstate, or state agencies;
- Expand eligibilities for various project types, including allowing the construction of new decentralized wastewater systems;
- Create new incentives to a subset of borrowers that are subject to additional federal funding application requirements;
- Establish additional application requirements, some of which encourage fiscal and environmental sustainability in project designs, and others that are specific to certain types of federal funding;
- Make minor, clarifying changes to existing rules.

### Brief history

On June 10, 2014, President Obama signed into law the Water Resources Reform and Development Act of 2014. Among its provisions are amendments to Titles I, II, V and VI of the CWA that directly affect CWSRF programs. Some amendments to the CWA took effect Oct. 1, 2014, and others in September 2015. The impact of the changes to this federal law on Oregon's CWSRF program are both required and optional program policy changes that range from rule and statute changes to internal program procedures revisions.

### Request for other options

During the public comment period, DEQ asked for public comment on whether to consider other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business.

## Statement of Need

### Longer Financing Terms

Proposed rules will allow longer financing terms for loans and non-treatment works bond purchase agreements.

What need would the proposed rule address?

How would the proposed rule address the need?

Current administrative rules limit the terms of financing to:

- Loan terms for all eligible projects up to the lesser of 20 years or the useful life of the asset, and
- Bond purchases for treatment works for the lesser of 30 years or the useful life of the asset.

For some communities, financing terms associated with shorter repayment periods present a hardship for ratepayers.

The proposed rules allow the following additional longer-term financing options:

- Loan terms for all eligible projects for the lesser of 30 years or the useful life of the asset, and
- Bond purchase agreements for all eligible projects for the lesser of 30 years or the useful life of the asset.

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

<b>Principal forgiveness</b>	
Proposed rules will allow a larger amount of principal forgiveness available to borrowers with an allocation process that maximizes its benefits to borrowers.	
What need would the proposed rule address?	How would the proposed rule address the need?
Current administrative rules, along with changes to federal law, do not allow DEQ to offer any amount of principal forgiveness. Principal forgiveness saves borrowers money by forgiving a portion of the total debt, or principal, and is a critical funding mechanism to help make debt affordable, especially for small communities.	Under former federal law, DEQ was able to provide principal forgiveness to borrowers in an amount that depended on federal appropriations. The proposed rules would allow DEQ to offer significantly more money in principal forgiveness each year, depending on federal appropriations. Only those borrowers designated as municipality or intermunicipal, interstate, or state agencies are eligible. The rules create an award system that could allow many more borrowers to receive principal forgiveness. This could result in considerable annual savings in debt service for borrowers who receive principal forgiveness.

<b>New incentives</b>	
Proposed rules will allow incentives in the form of lower interest rates to a subset of borrowers that are subject to additional federal funding application requirements.	
What need would the proposed rule address?	How would the proposed rule address the need?
Application requirements for CWSRF projects can be costly and time consuming for borrowers. New federal law requires a subset of borrowers, designated to receive federal loans, to complete more requirements including those related to the procurement of architectural and engineering contracts.	The proposed rules create a pilot project giving DEQ the opportunity to offer incentives, in the form of a reduced interest rate, on a first come, first serve basis to the subset of borrowers designated as receiving federal loans. These incentives should help selected borrowers offset the cost of the additional application requirements.

## Expanded eligibilities

Proposed rules will expand funding eligibility to various specific project types including allowing the construction of new decentralized wastewater systems.

What need would the proposed rule address?	How would the proposed rule address the need?
Fewer project options available to borrowers limits the opportunity for them to choose the best option that meets their specific cost and water quality protection and improvement needs.	Proposed changes to rules include additional project eligibilities, many of which provide new opportunities for funding and promote environmental sustainability. These new options allow borrowers to have more choices, allowing them to pick an option that is best for their community and to address local water quality issues. New eligible projects include various specific project types including the construction of new decentralized systems, in addition to the already eligible repair and the replacement of these systems.

## Additional application requirements

Proposed rules will require additional application requirements, some of which encourage fiscal and environmental sustainability in project designs and others that are specific to certain types of federal funding.

What need would the proposed rule address?	How would the proposed rule address the need?
Federal law requires additional application requirements, some of them encourage fiscal and environmental sustainability designs in projects and others are specific to certain types of federal funding.	The proposed rule aligns directly with the CWA so that state law reflects federal law.

## Housekeeping

Proposed rules will address some minor housekeeping items that will simplify the rules.

What need would the proposed rule address?

How would the proposed rule address the need?

Some of the existing rules, as written, are unclear or do not reflect current policy.

The proposed rules include small adjustments to existing rules to improve readability, accuracy and simplicity.



## Fee Analysis

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This rulemaking does not involve fees.

## Statement of fiscal and economic impact

### Fiscal and Economic Impact

The proposed changes to DEQ's CWSRF program pose direct fiscal impacts to local governments and special districts as they are the primary borrowers of program funds. Some of the possible fiscal impacts are beneficial by including better financing options such as longer financing terms, more incentives, additional eligible projects, and encouraging effective and sustainable project designs. The proposed rules could have a negative economic impact to local governments if the new application requirements, such as the cost and effectiveness analysis, results in additional upfront planning and consultant costs.

As a result of the proposed rules, DEQ might experience direct fiscal impacts to the CWSRF program. No other DEQ programs will be affected. The fund's fiscal impacts are related to the cost of the administration and maintaining the perpetuity of the fund.

Additionally, if the proposed rule changes resulted in more CWSRF projects, some of the coordinated state agencies consulted for environmental review and the Environmental Protection Agency Region 10 may see an increase in the amount of administrative time and cost to evaluate environmental impacts of the additional funded projects.

The general public and business owners could indirectly economically benefit from the proposed program changes. There could be a positive fiscal impact if they are located in a service area where the CWSRF funds a public agency project that affects sewer or other service rates by allowing a public agency to mitigate the need for large rate increases with these new financing options.

### Statement of Cost of Compliance

#### **State and federal agencies, other than DEQ**

The proposed changes to the CWSRF program include longer terms, more incentives, additional eligible projects, more application requirements, and encouraging effective and sustainable project designs. Some of these changes could make the program more competitive as compared to other funding programs and could result in more funded projects. If this is the case, the proposed rules could have an impact on some of the coordinated state agencies consulted for environmental review and the EPA, Region 10, as these entities may see an increase in the amount of administrative time and cost to evaluate environmental impacts of the additional funded projects.

#### **DEQ**

The CWSRF program is self-sustaining in terms of administration and program costs. The proposed rules would have two limited fiscal impacts to the program but none to other DEQ programs:

Administrative costs: The fund would incur additional administrative time and costs to conduct the new requirement for a cost and effectiveness analysis on all projects. This additional work includes more detailed project design review from engineers and more time invested in the compliance and monitoring component of the analysis.

Programmatic impact: The EPA guidelines for implementing changes to CWSRF programs require protecting the fund's perpetuity. EPA Region 10's CWSRF financial specialist indicates a program's financial viability would be negatively affected if changes to the program show more than a ten percent decrease in total binding commitments over a 60-year projection period. DEQ performed financial analysis determining the long-term change in total binding commitments on its CWSRF given the proposed changes to the program. DEQ presented the results of this analysis to the advisory committee. The assumptions for the analysis were as follows:

- All future borrowers take the longest available term for projects. Funding conditions for the longer terms include a premium interest rate for certain categories of borrowers in order to protect the fund's perpetuity fund, and
- The program offers all available incentives, such as principal forgiveness, each year the federal capitalization grant is awarded.

Given these assumptions, the program's total binding commitments would be approximately \$5.4 billion over a 60-year projection period. Without these program changes, the program's total binding commitments would be \$5.8 billion over a 60-year projection period. The difference is a seven percent decrease. This is below EPA's ten percent threshold and still protects the fund's perpetuity.

### **Local governments**

Local governments are the primary borrowers of CWSRF funding. For the program's purposes, local governments include cities, counties, sanitary districts, special districts, soil and water conservation districts and certain intergovernmental entities.

The proposed rules could have an economic benefit to local governments in the following ways:

- Offering longer-term financing would especially benefit smaller and lower-income communities by spreading the public agency's debt repayment over a longer period,
- The larger amount of principal forgiveness available to disadvantaged communities and other eligible projects provides an increased opportunity for borrowers to receive this subsidy which reduces the cost of funding the project,
- Borrowers have a larger selection of project types including the lower cost option of constructing decentralized wastewater treatment systems as compared to an expensive larger treatment system.

The proposed rules could have a negative economic impact on local governments by requiring additional upfront planning and consultant costs for considerations such as: cost of construction, replacement, maintenance and operations as well as the amount of water and energy conservation resulting from the project. However, the long-term fiscal impact of these new requirements should be beneficial to these borrowers because they promote more effective and sustainable projects.

### **Public**

The proposed rules would have no direct economic impact on the general public. However, the proposed changes may indirectly benefit individual ratepayers located in public agency service areas where the CWSRF program funds projects if the new financing options allow the public agency to mitigate the need for large rate increases.

### **Large businesses - businesses with more than 50 employees**

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

**Small businesses – businesses with 50 or fewer employees**

The proposed rules would have no direct economic impact to small businesses because they are not eligible to borrow CWSRF funds, as detailed in a. – d. below.

There may be indirect beneficial economic impacts to small businesses located in public agency service areas where the CWSRF program funds projects if changes to the program allow the public agency to mitigate the need for large rate increases.

Additionally, construction-related businesses may indirectly benefit from the possible increase in project funding if public agencies contract for their services on CWSRF-funded construction.

<b>Cost of Compliance for Small Businesses</b>	
a. Estimated number of small businesses and types of businesses and industries with small businesses subject to proposed rule.	None. Small businesses are not eligible to borrow CWSRF funds. An indirect impact may occur if the business is in a public agency service area and is a ratepayer.
b. Projected reporting, recordkeeping and other administrative activities, including costs of professional services, required for small businesses to comply with the proposed rule.	None. Small businesses are not eligible to borrow CWSRF funds.
c. Projected equipment, supplies, labor and increased administration required for small businesses to comply with the proposed rule.	None. Small businesses are not eligible to borrow CWSRF funds.
d. Describe how DEQ involved small businesses in developing this proposed rule.	DEQ did not involve small businesses in this rulemaking as they are not directly affected by the CWSRF program.

Documents relied on for fiscal and economic impact

Document title	Document location
EPA guidance and policy memos for the CWSRF program	Oregon DEQ’s main office at 811 SW Sixth Ave., Portland, OR 97204
Summary of CWSRF Advisory Committee Recommendations	<a href="http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ACWSRF.aspx">http://www.oregon.gov/deq/RulesandRegulations/Pages/Advisory/ACWSRF.aspx</a>

## Advisory committee

DEQ appointed an advisory committee to provide input on the proposed rules and make recommendations on this fiscal and economic impact statement. Committee agendas and meeting summaries are available on the Advisory Committee Web page here: [CWSRF Advisory Committee Page](#).

To comply with ORS 183.333, DEQ asked for the committee's recommendations on:

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

The committee reviewed the draft fiscal and economic impact statement and approved it. Their approval is documented in the Advisory Committee meeting minutes dated April 15, 2015.

The committee found that the proposed rules would have no direct economic impact to small businesses because they are not eligible to borrow CWSRF funds. As a result, small businesses were not involved in the rulemaking. The requirements in ORS 183.540, to reduce the economic impact on small business, do not apply to this rulemaking.

## Housing cost

To comply with ORS 183.534, DEQ determined the proposed rules would have no effect on the development cost of a 6,000-square-foot parcel and construction of a 1,200-square-foot detached, single-family dwelling on that parcel. These proposed rules only affect the cost of developing publically-owned water quality control and protection projects.

## Federal relationship

This section explains how DEQ complies with the statutory requirement that it attempt to have its rules correspond with equivalent federal rules. [ORS 183.332](#)

Proposed Rule or Topic	Relationship to Federal Law
<b>Longer Financing Terms</b>	
Proposed rules will allow longer financing terms for loans and for non-treatment works bond purchase agreements.	Substantively equivalent to Section 603(d)(1)(A) of the CWA. One difference is that DEQ's condition for these longer terms includes interest premiums for certain borrower types to protect the perpetuity of the fund.
<b>Principal forgiveness</b>	
Proposed rules will allow a larger amount of principal forgiveness available to borrowers with an allocation process that maximizes its benefits to borrowers.	Substantively equivalent to Section 603(i) of the CWA. DEQ rule differs in that principal forgiveness allocation amount on any given year may be less than as stipulated in federal appropriations to protect the fund's perpetuity. Funding is prioritized to borrowers who are economically disadvantaged, meeting the affordability criteria.
<b>Expanded eligibilities</b>	
Proposed rules will expand funding eligibility to various specific project types including allowing the construction of new decentralized wastewater systems.	By reference to Section 603(c)(1-10) of the CWA. Expanded eligibilities will not include those allowed in the CWA amendments Section 603(c)(11) or those eligible by the new federal definition of treatment works.
<b>New incentives</b>	
Proposed rules will allow incentives in the form of lower interest rates to a subset of borrowers that are subject to additional federal funding application requirements.	In addition to federal requirements. Rules are proposed for economic reasons to offset the cost of some of the additional funding requirements for a subset of borrowers designated as receiving federal loans.
<b>Additional application requirements</b>	
Proposed rules will require additional application requirements, some of which encourage fiscal and environmental sustainability in project designs and others that are specific to certain types of federal funding.	By reference to: 1). Section 602(b)(13) of the CWA, and 2). The EPA's guidance document "Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act." Dated January 6, 2015. One difference is that DEQ requirements for Section 602(b)(13) of the CWA are in addition to federal requirements, extending to all

Proposed Rule or Topic	Relationship to Federal Law
	applicants, not just those that are defined as a municipality or intermunicipal, interstate, or a state agency. However, there will be a shorter process for these additional categories of applicants to meet these requirements.
<b>Housekeeping</b>	
Proposed rules will address some minor housekeeping items that will simplify the rules.	In addition to federal requirements, in order to address administrative issues.

What alternatives did DEQ consider if any?

DEQ aligned new rules with federal law as much as possible. DEQ evaluated alternatives for addressing changes to the federal Clean Water Act and chose approaches that optimize complying with federal law, helping communities meet water quality infrastructure needs in an affordable way, and protecting the perpetuity of the revolving fund.

## Land Use

### Land-use considerations

In adopting new or amended rules, ORS 197.180 and OAR 340-018-0070 require DEQ to determine whether the proposed rules significantly affect land use. If so, DEQ must explain how the proposed rules comply with state wide land-use planning goals and local acknowledged comprehensive plans.

Under OAR 660-030-0005 and OAR 340 Division 18, DEQ considers that rules affect land use if:

- The statewide land use planning goals specifically refer to the DEQ rule or program, or
- The rule or program is reasonably expected to have significant effects on:
  - Resources, objectives or areas identified in the statewide planning goals, or
  - Present or future land uses identified in acknowledged comprehensive plans

To determine whether the proposed rules involve programs or actions that affect land use, DEQ reviewed its Statewide Agency Coordination plan which describes the DEQ programs that have been determined to significantly affect land use. DEQ considers that its programs specifically relate to the following statewide goals:

<b>Goal</b>	<b>Title</b>
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5	Open Spaces, Scenic and Historic Areas, and Natural Resources
6	Air, Water and Land Resources Quality
9	Ocean Resources
11	Public Facilities and Services
16	Estuarial Resources

Statewide goals also specifically reference the following DEQ programs:

- Nonpoint source discharge water quality program – Goal 16
- Water quality and sewage disposal systems – Goal 16
- Water quality permits and oil spill regulations – Goal 19

### Determination

The proposed rules could significantly affect land use, determined by OAR 340-018-0030(5). DEQ's statewide goal compliance and local plan compatibility procedures adequately cover the proposed rules. Any new projects funded under these proposed rules would have to comply with OAR 340-054-0022(5)(e), which requires demonstration that the projects comply with land use requirements in OAR 340-018-0050 before they receive CWSRF funding.

## Stakeholder and public involvement

### Advisory committee

DEQ established the CWSRF Advisory Committee in 2011 to address program issues and provide input to DEQ for the 2012 rulemaking. After the committee last met in 2012, DEQ's director appointed a 14-member standing CWSRF Committee that includes many of the original members. Current members represent interests from federal and state agencies, local governments, water and wastewater districts and utilities, watershed organizations, environmental advocacy groups, local conservation districts, and the financial sector. The committee web page is at: [CWSRF Advisory Committee](#).

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

DEQ convened the committee for this rulemaking on Dec. 10, 2014. The committee met five times between December 2014 and April 2015. The Advisory Committee provided recommendations on updating the CWSRF program's administrative rules in response to recent related Congressional revisions to the CWA. The committee developed a report detailing its recommendations and reviewed the Statement of Fiscal and Economic Impact section above. Committee recommendations are found on the Advisory Committee web page.

## Meeting notifications

To notify people about advisory committee activities, DEQ sent GovDelivery bulletins, a free e-mail subscription service, to the following lists:

- DEQ sent a one-time notice to “Water Quality”, “Rulemaking” and “Clean Water State Revolving Fund” subscribers to describe how to sign up for advisory committee meeting notices.
- DEQ sent a notice, prior to each advisory committee meeting, to those who signed up for the advisory committee bulletin and to the “Clean Water State Revolving Fund” and “Rulemaking” subscribers.

DEQ also added advisory committee announcements to DEQ’s calendar of public meetings at: [DEQ Calendar](#).

## EQC prior involvement

DEQ shares general rulemaking information with EQC through the monthly Director’s Report. DEQ shared information about this rulemaking with the EQC in the Director's Report on Nov. 7, 2014.

## Public notice

On July 15, 2015, DEQ submitted notice about this rulemaking to:

- Oregon Secretary of State for publication in the August 2015 Oregon Bulletin,
- The Rulemaking Web page: [CWSRF Rulemaking](#),
- Via email, to:
  - Interested parties and stakeholders, through GovDelivery (8,014 recipients)
  - The following key legislators required under [ORS 183.335](#):
    - Rep. Jessica Vega-Pederson
    - Sen. Richard Devlin
    - Rep. Dan Rayfield
    - Rep. Peter Buckley
  - Members of the CWSRF Advisory Committee,
  - EPA, Region 10,
- Facebook and Twitter with postings linking to the Rulemaking Web page identified above,
- The DEQ event calendar: [DEQ Calendar](#).

## Public hearings

DEQ held public hearings on Wednesday, Aug. 19, 2015, in five different DEQ office locations across the state at two different times of the day. The times and locations of the hearings are described in the following tables:

	<b>Hearing 1</b>	<b>Hearing 2</b>	<b>Hearing 3</b>
Date	Aug. 19, 2015	Aug. 19, 2015	Aug. 19, 2015
Time	11 a.m.	11 a.m.	11 a.m.
Address line 1	Pendleton DEQ conf. room	Main conf. room	Large conf. room
Address line 2	800 SE Emigrant, #330	475 NE Bellevue	221 Stewart Ave., # 201
City	Pendleton , OR 97801	Bend, OR 97701	Medford, OR 97501
Presiding officer	Paul Daniello	Todd Hesse	Jaime Isaza
Staff presenter	Katie Foreman	Katie Foreman	Katie Foreman
Conference number	(888) 363-4734	(888) 363-4734	(888) 363-4734
Session number	NA	NA	NA
Participant code	2045600	2045600	2045600
Webinar	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>

	<b>Hearing 4</b>	<b>Hearing 5</b>	<b>Hearing 6</b>
Date	Aug. 19, 2015	Aug. 19, 2015	Aug. 19, 2015
Time	11 a.m.	11 a.m.	4 p.m.
Address line 1	McKenzie room	Conf. room 10	Pendleton DEQ conf. room
Address line 2	165 East 7th Ave., #100	811 SW Sixth Avenue,	800 SE Emigrant, #330
City	Eugene, OR 97401	Portland, OR 97204	Pendleton, OR 97801
Presiding officer	Bob Haberman	Larry McAllister	Paul Daniello
Staff presenter	Katie Foreman	Katie Foreman	Katie Foreman
Conference number	(888) 363-4734	(888) 363-4734	(888) 363-4734
Session number	NA	NA	NA
Participant code	2045600	2045600	2045600
Webinar	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>

	<b>Hearing 7</b>	<b>Hearing 8</b>	<b>Hearing 9</b>
Date	Aug. 19, 2015	Aug. 19, 2015	Aug. 19, 2015
Time	4 p.m.	4 p.m	4 p.m
Address line 1	Main conf. room	Large conf. room	Willamette room
Address line 2	475 NE Bellevue	221 Stewart Ave., # 201	165 East 7th Ave., Suite 100
City	Bend, OR 97701	Medford, OR 97501	Eugene, OR 97401
Presiding officer	Todd Hesse	Jaime Isaza	Bob Haberman
Staff presenter	Katie Foreman	Katie Foreman	Katie Foreman
Conference number	(888) 363-4734	(888) 363-4734	(888) 363-4734
Session number	NA	NA	NA
Participant code	2045600	2045600	2045600
Webinar	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>

	<b>Hearing 10</b>		
Date	Aug. 19, 2015		
Time	4 p.m.		
Address line 1	EQC-A		
Address line 2	811 SW Sixth Ave.		
City	Portland, OR 97204		
Presiding officer	Larry McAllister		
Staff presenter	Katie Foreman		
Conference number	(888) 363-4734		
Session number	NA		
Participant code	2045600		
Webinar	<a href="https://www.connectmeeting.att.com">https://www.connectmeeting.att.com</a>		

## Request for other options

During the public comment period, DEQ requested public comment on whether to consider other options for achieving the rules' substantive goals while reducing the rules' negative economic impact on business. This document includes a summary of comments and DEQ responses.

## Presiding Officers' Record

### Hearing 1

#### Meeting location:

- Portland DEQ HQ
- Eugene DEQ Office
- Medford DEQ Office
- Bend DEQ Office
- Pendleton DEQ Office

Meeting date and time: Aug. 19, 2015, 11 a.m.

Presiding Officer: Larry McAllister

The presiding officer convened the hearing and summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form or, if attending by Web conference to use the "chat" feature to indicate their intent to present comments.

According to Oregon Administrative Rule 137-001-0030, the presiding officer summarized the content of the notice given under Oregon Revised Statute 183.335.

DEQ announced that any parties who wished to receive future information about the rulemaking should subscribe to the GovDelivery email list. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

Seven people attended the hearing. During the question and answer session several people asked questions about changes proposed to the CWSRF loan program. DEQ staff provided answers and a short discussion. There were no verbal or written comments submitted. The hearing adjourned at 11:35 a.m.

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Meeting location:

- Portland DEQ HQ
- Eugene DEQ Office
- Medford DEQ Office
- Bend DEQ Office
- Pendleton DEQ Office

Meeting date and time: Aug. 19, 2015, 4 p.m.

Presiding Officer: Larry McAllister

The presiding officer convened the hearing and summarized procedures for the hearing including notification that DEQ was recording the hearing. The presiding officer asked people who wanted to present verbal comments to complete, sign and submit a registration form or, if attending by Web conference to use the “chat” feature to indicate their intent to present comments.

According to Oregon Administrative Rule 137-001-0030, the presiding officer summarized the content of the notice given under Oregon Revised Statute 183.335.

DEQ announced that any parties who wished to receive future information about the rulemaking should subscribe to the GovDelivery email list. DEQ added all written and oral comments presented at each hearing to the summary of comments and agency responses section of this staff report.

One DEQ staff person attended the hearing. Nobody asked questions or submitted any or written comments. The hearing adjourned at 4:31 p.m.

#### Other comments received outside of the public hearings

DEQ did not receive any comments through its outlook comment mailbox, comment-cwsrf.  
DEQ did receive four comments via its online comments system.  
DEQ did receive one comment sent by email directly to the rule writer.

#### Close of public comment period

The comment period closed Monday, Aug. 24, 2015, at 4 p.m.

## Summary of comments and DEQ responses

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

**1 Comment** **From Oregon Water Resources Congress,** OWRC is concerned that the proposed rules include a contradiction to the Advisory Committee's recommendations. As proposed, the rules exclude Oregon's irrigation districts from applying for CWSRF's principal forgiveness incentive. OWRC understands that irrigation districts are classified under Oregon statute as quasi-municipal government entities. Yet, there was no discussion within the Advisory Committee regarding federal regulations excluding irrigation district's from principal forgiveness eligibility. OWRC asks that the proposed rulemaking be postponed to allow an opportunity for this issue to be discussed within the Advisory Committee with the intent to develop a collaborative solution for inclusion in the committees' recommendations.

**Response** DEQ agrees that the issue of irrigation district eligibility for additional subsidization (principal forgiveness) was not adequately discussed by the CWSRF Advisory Committee. DEQ received legal guidance indicating the new federal regulations do not include irrigation districts as eligible recipients of principal forgiveness. To further verify this determination, DEQ requested a formal legal opinion to assure DEQ has not overlooked any opportunity to include districts in principal forgiveness.

DEQ does not recommend postponing the rulemaking as any delay would jeopardize DEQ's compliance in implementing recent revisions to the Clean Water Act. DEQ anticipates further CWSRF rulemaking in 2017, and will re-evaluate Oregon Water Resources Congress' concern during that rulemaking.

**2 Comment** **From the City of Molalla,** The City of Molalla supports this rulemaking in that the principal creates debt service savings. The city may consider making additional upgrades and improvements to our recycled water program under these new proposed rules.

**Response** DEQ acknowledges and appreciates the city's statement of support and looks forward to working with the city in support of their recycled water program.

**3 Comment** **From the Environmental Protection Agency, Region 10,** EPA identifies an inaccuracy in the proposed rule language at 340-054-0060(4)(a). EPA commented that in addition to complying with the higher of either the state or federal wage requirements, a CWSRF

borrower must also abide by all aspects of the Davis Bacon Act itself. DEQ needs to correct the proposed language to ensure it is accurate.

**Response** DEQ agrees with EPA's comment and will revise the language at 340-054-0060(4)(a) to better reflect the federal requirements for borrowers to comply with all aspects of the Davis Bacon Act.

**4 Comment** **A joint comment from the Special Districts Association of Oregon, the League of Oregon Cities, and the Oregon Association of Clean Water Agencies,** Our agencies support many key aspects of the proposed rulemaking including:

- Longer-term financing
- Increase in the amount of principal forgiveness
- Expanded project eligibility
- Greater inclusion of water and energy conservation investments
- Continuation of the program's Sponsorship Option
- Streamlining of the program's application process

**Response** DEQ thanks these three agencies for their participation on the CWSRF Advisory Committee and the expertise they provided in developing the proposed rules. DEQ agrees the proposed changes in these aspects of the program are a valuable refinement to DEQ's loan program.

**5 Comment** **From the company, Orenco Systems,** Often, decentralized wastewater treatment systems are misrepresented, or misunderstood by system designers. Establishing guidelines for realistic construction and operation/maintenance costs is paramount in protecting the interests of the taxpayer, owner or borrower. Funding agencies are uniquely positioned to review cost estimates and engineering reports to ensure all feasible collection system alternatives are considered. Orenco Systems urges DEQ to establish guidelines that provide a mechanism for determining whether costs for alternative systems are reasonable.

**Response** The comment only indirectly addresses the proposed rules in that they would now allow funding of new decentralized systems in addition to replacing or repairing existing decentralized systems under current rule. DEQ agrees that all alternative wastewater systems proposals should be evaluated using accurate costs and technical data. The CWSRF loan program is probably not the appropriate mechanism for determining if costs for alternative systems are reasonable. DEQ's water quality engineers generally review costs for reasonability, but DEQ does not have the resources to establish and maintain cost guidelines for all the various wastewater technologies on the market.

## Implementation

### Notification

The proposed rules will become effective upon filing on approximately Oct. 21, 2015.

DEQ will notify:

- Interested parties through the same GovDelivery list when noticing the public comment period (Clean Water State Revolving Fund, and Rulemaking lists within GovDelivery).
- DEQ regional and water quality program staff and Regional Solutions Team
- Advisory Committee members
- League of Oregon Cities membership
- Other funding agencies (USDA Rural Development, Business Oregon's IFA)

### Training

- CWSRF staff statewide will be trained on the changes to the CWSRF program
- Other funding agencies (USDA Rural Development, Business Oregon's IFA) will be briefed on changes to the CWSRF program
- Other stakeholders, such as municipalities, consulting engineers, etc.

### Systems

- Website – DEQ will update the rulemaking and program websites with applicable information.
- Necessary program forms and documents will be revised to reflect any new program requirements.

**Requirement**

Oregon law requires DEQ to review new rules within five years after EQC adoption. The law also exempts some rules from review. DEQ determined that the rules described in this report are subject to the five-year review based on its analysis on the law in effect when EQC adopted these rules.

**Exemption from five-year rule review**

All of the proposed rules are exempt from the five-year review because they are amendments to existing rules. 183.405(4).

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

### **DIVISION 54**

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

##### **340-054-0005**

###### **Purpose**

(1) The rules in this division establish procedures and requirements for the 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.

(2) This division:

(a) Assists a public agency to obtain financing for a project that enhances, protects or restores water quality.

(b) Ensures the loan application and funding processes, procedures and requirements are clear.

(c) Promotes loan affordability by offering below-market interest rates.

(d) Ensures perpetuity of the CWSRF for reliability of project funding.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12

##### **340-054-0010**

###### **Definitions**

The following definitions apply to this rule division:

(1) “Applicant” means a public agency that has applied for a CWSRF loan under this division.

(2) “Borrower” means a public agency that has signed a CWSRF loan agreement with DEQ.

(3) “Change order” means a written order and supporting information from a borrower to a borrower’s contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.

- (4) “Checklist of application requirements” means a list that DEQ provides of all documents an applicant must submit to DEQ under this division.
- (5) “Clean Water Act” or “CWA” means the federal Water Pollution Control Act, 33 U.S.C. §1251 - §1387.
- (6) “Clean Water State Revolving Fund” or “CWSRF” means the Water Pollution Control Revolving Fund established under ORS 468.427.
- (7) “Construction” means the erection, installation, expansion or improvement of a wastewater or stormwater facility, nonpoint source control activity or estuary management project, and includes the demolition of an obsolete facility.
- (8) “Cross-cutting authorities” means requirements of federal laws and Executive Orders that apply to projects and activities funded under the CWSRF program.
- (9) “Default” means the failure to pay principal, interest or annual fees, or to comply with other CWSRF loan terms or provisions, and includes the filing of bankruptcy or other written admission of an inability to satisfy a borrower’s obligations under a CWSRF loan.
- (10) “DEQ” means the Oregon Department of Environmental Quality.
- (11) “Design” means preparing engineering drawings and specifications for the proposed construction, and may include pre-design activities.
- (12) “EPA” means the U.S. Environmental Protection Agency.
- (13) “Estuary management” means implementing actions identified in a Comprehensive Conservation Management Plan developed for a designated national estuary.
- (14) “Federal loans” are loans DEQ designates yearly in its Intended Use Plan that represent projects that are funded with monies directly made available by the federal capitalization grant for the associated federal fiscal year.
- (15) “Local community loan” means a loan, the proceeds of which a public agency uses to establish a local financial program that will fund an eligible nonpoint source control or estuary management activity.
- (16) “Maintenance” means regularly scheduled work performed to repair, replace or upgrade equipment in a facility, or to prevent or correct a failure or a malfunction of a wastewater or stormwater facility, nonpoint source control or estuary management project.
- (17) “Natural infrastructure” means the use of natural form and ecosystem function to restore or augment a project’s intended water quality benefits.
- (18) “Nonpoint source” has the meaning given in ORS 468B.005.

(19) “Nonpoint source control” means implementation of a nonpoint source control activity under section 319 of the Clean Water Act and 40 C.F.R. §35.3115(b) that is included in the 2014 Oregon Nonpoint Source Management Program Plan.

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

(21) “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 providing a wastewater or stormwater facility, nonpoint source control or estuary management project intended to remediate an existing or anticipated water pollution problem, but does not include the preparation of detailed bid documents for construction.

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

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

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

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

(26) “Ready to proceed” means, in regard to a project, that a loan applicant’s project details have been published in the Intended Use Plan under OAR 340-054-0025(3) – 340-054-0025(5) and the applicant has met all loan requirements set out in OAR 340-054-0022.

(27) “Replacement” means obtaining and installing equipment, accessories or appurtenances necessary for the ongoing operation of a wastewater or stormwater facility, nonpoint source control or estuary management project in order to maintain a facility or project for the purpose for which it was designed and constructed during its useful life, but does not mean the replacement of a facility or project at the end of its useful life.

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

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

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

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

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

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

(34) “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.

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

(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.

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

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

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 – 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 3-2010(Temp), f. & cert. ef. 5-4-10 thru 10-29-10; DEQ 13-2010, f. & cert. ef. 10-27-10; DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14

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

#### **Authorized Fund Uses**

DEQ will use the CWSRF only to:

- (1) Make loans to eligible borrowers identified in the Intended Use Plan developed under OAR 340-054-0025;
- (2) Fund loan reserves specified in OAR 340-054-0036;
- (3) Purchase bonds or acquire other debt obligations incurred after March 7, 1985 as provided in OAR 340-054-0071;
- (4) Pay CWSRF program administration costs to the extent federal and state law allow;
- (5) Earn interest on fund accounts;
- (6) Establish reserves for bonds issued by the state for use by the fund; or
- (7) Pay principal and interest of bond obligations sold to benefit the fund.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423–468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12; DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14

### **340-054-0015**

#### **Eligible Projects and Activities**

A public agency may apply for a CWSRF loan up to 100 percent of the cost of a water quality project or the project related costs for the following project types:

- (1) To any municipality or intermunicipal, interstate, or State agency to construct publicly owned treatment works.
- (2) Implementing a management program established under section 319 of the Clean Water Act.
- (3) Developing and implementing a comprehensive conservation and management plan under section 320 of the Clean Water Act.
- (4) Constructing, repairing, or replacing decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage.
- (5) Measures to manage, reduce, treat, or recapture stormwater or subsurface drainage water.
- (6) To any municipality or intermunicipal, interstate, or State agency for measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.
- (7) Developing and implementing watershed projects meeting the criteria set forth in section 122 of the Clean Water Act.
- (8) To any municipality or intermunicipal, interstate, or State agency for measures to reduce the energy consumption needs for publicly owned treatment works.
- (9) For reusing or recycling wastewater, stormwater, or subsurface drainage water.
- (10) For measures to increase the security of publicly owned treatment works.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12

### **340-054-0022**

#### **Loan Application Requirements**

- (1) Application submittal. DEQ will notify interested parties at least annually of the opportunity to submit applications for a CWSRF loan. An eligible public agency may submit a CWSRF loan application to DEQ at any time.

(2) Consideration for funding. DEQ 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 DEQ:

(a) A complete application on the applicable DEQ form;

(b) Documents specified in the DEQ checklist of application requirements;

(c) Audited financial statements for the three years prior to the application date and the applicant's current budget, unless waived in writing by DEQ;

(d) Evidence 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;

(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. DEQ may require an applicant to meet the following criteria 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 DEQ requires showing 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 DEQ 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 DEQ;

(i) Official statement of recently issued bonds if required by DEQ;

(j) A DEQ-approved certification that the requirements for the cost and effectiveness analysis and the subsequent project selection are completed as required by section 602(b)(13) of the CWA;

(k) Any other information DEQ requests 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 DEQ:

- (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 DEQ.
- (c) Unless waived by DEQ, 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 DEQ, 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) DEQ approved plans and specifications as required under OAR chapter 340, division 52.
- (g) An environmental determination obtained from DEQ for a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:
- (A) An applicant must provide all necessary documentation to support DEQ'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 DEQ, and DEQ 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 DEQ:
- (a) Unless waived by DEQ, 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 DEQ, demonstration of compliance with applicable federal environmental cross-cutting authorities for a construction project.

(c) An environmental determination obtained from DEQ for a construction project of a treatment works as defined in ORS 468.423, including a nonpoint source pollution control (CWA § 319) or estuary management (CWA § 320) project that are construction and treatment works as defined in ORS 468.423. The environmental determination must meet the following conditions:

(A) An applicant must provide all necessary documentation to support DEQ'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 DEQ, and DEQ 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) For a construction-only loan, DEQ-approved plans and specifications for the project as OAR chapter 340, division 052 requires.

(g) If the estimated cost of a project is in excess of \$10 million, a value engineering study satisfactory to DEQ done prior to beginning construction. 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 DEQ:

(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 DEQ review and approve this document before 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. DEQ 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 an engineered planning report to DEQ. The report must define the water quality problem and specify actions an applicant will implement to correct the problem.

(8) Federal loans. In addition to the applicable requirements in sections (3) - (7) of this rule, a loan designated as a federal loan must meet the requirements for federally funded projects in accordance with the Clean Water Act Title VI and EPA's January 6, 2015 memo "Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act."

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 – 468.440

Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 11-2012, f. & cert. ef. 12-14-12

### **340-054-0025**

#### **Intended Use Plan (IUP) and Project Priority List**

(1) IUP development. DEQ will annually develop and submit an IUP to EPA as described in the CWA § 606 and 40 C.F.R. §35.3150. DEQ will update the IUP as specified in section (2) of this rule. The IUP will describe how DEQ proposes to fund projects through the CWSRF and will include a project priority list that numerically ranks all eligible applications received.

(2) IUP update.

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

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

(3) IUP public notice. DEQ will provide public notice and 30 days for the public to comment on a proposed draft IUP. (a) DEQ will notify all new applicants of their project application ranking on the project priority list when DEQ develops and updates an annual IUP.

(a) (b) An applicant may ask DEQ 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.

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

(4) Project priority list development. DEQ will include an eligible project under OAR 340-054-0015 on the project priority list if an applicant submits a completed application on a DEQ- approved form.

(5) Project priority list ranking. DEQ will numerically rank all eligible proposed project applications based on the point sum from the criteria specified in OAR 340-054-0026 and OAR 340-054-0027.

(a) Except as specified in subsection (b) of this section, DEQ will evaluate each criterion in OAR 340-054-0026 and 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) DEQ 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 (a) of this section.

(6) Removal of application from the project priority list.

(a) DEQ may retain an applicant's ranked project on the project priority list in an IUP for up to 36 months while an applicant pursues all applicable CWSRF financing requirements specified in this division.

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

(c) DEQ may provide one six-month extension to an applicant asking to remain on the project priority list beyond the 36-month limit. An applicant asking for an extension must submit to DEQ a written project status report on the applicant's project progress and an updated time frame indicating when the applicant will complete all CWSRF financing requirements.

(d) DEQ will provide written notice to an applicant before removing the applicant's project from the project priority list.

(e) DEQ will remove a project from the project priority list if:

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

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

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

(D) DEQ determines a project does not meet eligibility requirements;

(E) An applicant does not require CWSRF financing; or

(F) An applicant asks to be removed from the project priority list.

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

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 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; DEQ 11-2012, f. & cert. ef. 12-14-12

### **340-054-0026**

#### **CWSRF Project Ranking Criteria for Non-planning Loans**

(1) Category 1. Water quality standards and public health considerations.

(a) Does the project improve water quality by addressing water quality parameters including, but not limited to: temperature, dissolved oxygen, contaminated sediments, toxic substances, bacteria or nutrients?

(b) Does the project ensure that a facility currently in compliance, but at risk of noncompliance, maintains compliance?

(c) Does the project address noncompliance with water quality standards, public health issues or effluent limits related to surface waters, biosolids, water reuse or groundwater?

(d) If the project is not implemented, is a water quality standard likely to be exceeded or an existing exceedance likely to worsen?

(2) Category 2. Watershed and health benefits.

(a) Does the project improve or sustain aquatic habitat supporting native species or state or federally threatened or endangered species?

(b) Does the project address a 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?

(c) Does the 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?

(d) Does the project provide performance-based water quality improvements supported by monitoring and reasonable assurance that the project will continue to function over time?

(e) Does the 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 subsections (f) through (i) of this section of the rule?

(f) Does the 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?

(g) Does the project incorporate or expand water efficiency including, but not limited to, using improved technologies and practices to deliver equal or better services with less water, such as conservation, reuse efforts or water loss reduction and prevention?

(h) Does the project incorporate or expand energy efficiency including, but not limited to, using 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?

(i) Does the 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?

(3) Category 3. Other considerations.

(a) Does the project include a long-term planning effort that addresses financial, managerial or technical capability, or asset planning that ensures the project will be maintained?

(b) Does the project include a significant on-going educational or outreach component?

(c) Does the 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?

(d) Does the project address a small community's water quality improvement or restoration need?

(e) Does the project include a sponsorship option?

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

**340-054-0027**

**CWSRF Project Ranking Criteria for Planning Loans**

Will the scope of the planning effort:

- (1) Include more than one water quality benefit, pollutant or restoration effort?
- (2) Include sustainability?
- (3) Take advantage of an opportunity with respect to timing, finances, partnership or other advantageous opportunity?
- (4) Include financial, managerial or technical capability aspects of the project?
- (5) Include integrating natural infrastructure and built systems?
- (6) 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 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

### **340-054-0036**

#### **Reserves, CWSRF General Fund and Project Funding**

(1) Allocation to reserves and CWSRF general fund. DEQ 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 federal capitalization grant to the green project reserve.
- (d) Amount of funds remaining, after allocation to the reserves as specified in subsections (a) through (c) of this section of the rule, to the CWSRF general fund.

(2) Project funding increase.

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

(A) Funds are available in the CWSRF; and

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

(b) Any funding increase DEQ awards to a borrower will be in an amount specified in section (3) of this rule and will be done by increasing the amount of the borrower's existing loan or by DEQ making an additional loan to the borrower at the current interest rate.

(3) Project funding allocation.

(a) During a state fiscal year DEQ will assign a project to an appropriate reserve, to the CWSRF general fund or to both.

(b) Based on availability of funds in the CWSRF at the time of allocation, DEQ will allocate an amount to a borrower in project priority list rank order 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. DEQ may allocate additional funds if funds are available after allocating the maximum amount under subsection (b)(A) of this section of the rule to each borrower who requested 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; and

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

(c) During a state fiscal year DEQ 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.

(d) DEQ 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) DEQ may reallocate funds between small community and planning reserves and the CWSRF general fund unless demand exceeds available funds.

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

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

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 11-2012, f. & cert. ef. 12-14-12

- (1) Clean Water Act plans. DEQ 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. DEQ will not provide a loan that will be used for refinancing a long-term loan or other debt obligations.
- (3) Refinancing an interim loan. DEQ may provide a loan to refinance an interim loan or self-generated funds used to pay DEQ-approved project costs if the borrower:
  - (a) Provides DEQ 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. DEQ may provide short-term, construction period financing for an eligible project if the following conditions are met:
  - (a) The CWSRF's liquidity is sufficient to provide financing without adversely affecting the amount and timing of disbursements needed for prior obligations;
  - (b) The borrower has a legally enforceable obligation for long-term project financing satisfactory to DEQ; and
  - (c) The loan agreement for interim financing will stipulate DEQ is not obligated to provide long-term financing for the project.

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

### **340-054-0060**

#### **Loan Agreement and Conditions**

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

- (1) Timely use of loan funding. DEQ may cancel a loan agreement if a borrower fails to begin using loan proceeds within two years after signing a loan agreement.
- (2) Accounting. 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.

(3) Records retention. A borrower must retain project files and records for six years after project performance affirmative certification or project completion as determined by DEQ or such longer period as applicable state or federal law requires. A borrower must also retain financial files and records for three years after the loan is repaid in full.

(4) Wage requirements.

(a) A borrower for construction of a treatment works project must comply with all provisions of the Davis-Bacon Act, as amended, 40 U.S.C. §§3141 to 3144 and 3146, as detailed in section 513 of the Clean Water Act. Wage rates must be based on the wage requirements of the Davis Bacon Act 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 (a) of this section of the rule must comply with the prevailing wage rate requirements under ORS 279C.800 to 279C.870 and OAR 839-025-0000 to 839-025-0540.

(5) Construction materials. A borrower for construction of a treatments works project must ensure that all of the iron and steel products used in the project are produced in the United States as required by section 608 of the Clean Water Act.

(6) Debarment and suspension. A borrower must comply with Subpart C of 2 C.F.R part 180, Responsibilities of Participants Regarding Transactions Doing Business with Other Persons and Subpart C of 2 C.F.R part 1532, Responsibilities of Participants Regarding Transactions.

(7) Engineering documents. If a borrower uses CWSRF financing to construct a wastewater facility subject to OAR 340-052, it must submit to DEQ plans and specifications, operation and maintenance manuals, inspection and certification of proper construction, and any other applicable documentation OAR 340-052 and OAR 340-054-022 require.

(8) Inspections and progress reports.

(a) A borrower must 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. DEQ or its representative may enter property the borrower owns or controls to conduct interim inspections. DEQ may require progress reports sufficient to determine compliance with approved plans and specifications and with other loan agreement provisions.

(b) DEQ may request review and analysis of construction plans from relevant agencies or offices to ensure the project plans not subject to department review under OAR 340-052 support the successful implementation and completion of the project. A borrower must allow inspections by appropriately qualified persons during project construction or implementation to ensure the project as constructed conforms to project plans and other provisions of the loan agreement.

(9) Loan amendments.

(a) DEQ will not require a loan amendment for changes in project work that are consistent with project objectives and within the loan scope and funding level.

(b) DEQ will execute a loan amendment if:

(A) DEQ awards a borrower an increase in the original approved loan amount at any time during the project;

(B) The 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) DEQ determines a borrower must meet additional federal or state requirements for CWSRF financing.

(10) Change orders. DEQ may approve or reject a change order based on the loan eligibility of the project modification and on engineering value under OAR 340-052-0015. A borrower must submit a change order to DEQ 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.

(11) Project performance certification for a wastewater facility. A borrower must submit to DEQ, within a timeframe DEQ specifies, project performance documents to verify whether 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 certification.

(12) Eligible construction costs. DEQ will disburse loan funds for construction costs limited to work that complies with plans, specifications, change orders and addenda DEQ reviewed or approved.

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

(14) Contract and bid documents. A borrower must submit a copy of the awarded contract and bid documents to DEQ, including a tabulation of all bids received.

(15) Architectural and engineering services. Contractors for program management, construction management, feasibility studies, preliminary engineering design, design, engineering, surveying, mapping, or architectural related services for federal loans must be selected as provided in ORS 279C.110 and OAR 137-048-0220.

(16) Audit.

(a) If DEQ requests it, a borrower must submit audited financial statements to DEQ each year until the loan is repaid.

(b) If a borrower expends \$500,000 or more in federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, the borrower shall have a single organization-wide audit conducted in accordance with the Single Audit Act, as amended. If borrower expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014,

borrower shall have a single organization-wide audit conducted in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. Copies of all audits must be submitted to DEQ within 30 days of completion. If borrower expends less than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, borrower is exempt from federal audit requirements for that year. Records must be available to DEQ, the Oregon Secretary of State's Office, the federal government and their duly authorized representatives for the purpose of making audits, examinations and copies.

(17) Default remedies. A loan agreement must provide adequate remedies for DEQ to enforce the agreement's terms. Upon default by a borrower, DEQ may proceed with one or more of the following:

- (a) Pursuing any remedy available to it against the borrower.
- (b) Appointing a receiver at the expense of the borrower to operate the facility that generates the pledged revenues.
- (c) Setting and collecting utility rates and charges pledged as security for the loan.
- (d) Withholding any amounts otherwise due to the borrower from the State of Oregon and directing such funds be applied to the debt service and fees due on the CWSRF loan. If DEQ finds the loan to the borrower is otherwise adequately secured, DEQ may waive this right in the loan agreement or other loan documentation.
- (e) Declaring all or any part of the indebtedness immediately due and payable.

(18) Release. A borrower must release and discharge DEQ, its officers, agents and employees from all liabilities, obligations and claims occurring from project work or under the loan, subject only to exceptions previously agreed upon in a written contract between DEQ and the borrower.

(19) Effect of document approval or certification.

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

(b) DEQ may not be held responsible for:

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

(B) Verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(20) Reservation of rights.

(a) A borrower is not prohibited from requiring such assurances, guarantees, indemnity or other contractual requirements as it deems necessary or prudent from any party performing project work.

(b) This rule does not affect DEQ's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a borrower that fails to carry out its obligations under OAR Chapter 340.

(21) Other provisions and documentation. DEQ may include other provisions in a CWSRF loan agreement necessary to meet the Clean Water Act and ORS 468.423 to 468.440. DEQ may require documentation including, but not limited to, a legal counsel opinion that the loan agreement is enforceable.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 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; DEQ 11-2012, f. & cert. ef. 12-14-12

### **340-054-0065**

#### **Loan Types, Terms and Interest Rates**

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

(a) A loan secured by a general obligation bond, as defined in ORS 287A.001(1).

(b) A loan secured by the borrower's pledge of its full faith and credit and taxing power, as described in ORS 287A.315.

(c) A loan agreement, bond or other unconditional obligation that meets the requirements specified in section (2) of this rule.

(d) An alternative loan that meets the requirements specified in section (3) of this rule.

(2) A revenue secured loan that must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged by the borrower to DEQ. The obligation to pay must include a pledge of security acceptable to DEQ.

(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 wastewater or stormwater facility, nonpoint source control or estuary management project;

(B) All debt service;

(C) All other financial obligations including, but not limited to, contributions to reserve accounts imposed in connection with prior lien obligations; and

(D) An amount equal to the loan's coverage requirements. 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 selected by the borrower from subsection (d) of this section of the rule.

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

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

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

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

(A) 1.05:1-100 percent.

(B) 1.15:1-75 percent.

(C) 1.25:1-50 percent.

(D) 1.35:1-25 percent.

(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 borrower must promptly adjust rates and charges to assure future compliance with the rate requirements. DEQ 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 generates 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 borrower's financial condition.

(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 a CWSRF loan requirement, or if such sale, transfer or encumbrance may cause a violation of a CWSRF loan requirement.

(3) Alternative loans. DEQ may authorize an alternative loan for a reasonable alternative financing method if the borrower demonstrates to DEQ's satisfaction that:

(a) Borrowing money from the CWSRF through general obligation bonds, revenue bonds or a revenue-secured loan, as described in subsection(a), (b), (c), or (d) of section (1) of this rule is unduly burdensome or costly to the borrower; and

(b) The alternative loan has a credit quality substantially equal to, or better than, the revenue secured loan credit quality to the borrower. DEQ may consult with a financial advisor and may charge the borrower reasonable consultation costs to determine if an alternative loan meets the credit quality requirement.

(4) 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.

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

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

(d) Local community loans. The interest rate for a local community loan will be equal to 50 percent of the base rate.

(e) Federal loans. DEQ will determine the interest rate for federal loans. DEQ will not set a rate that exceeds the highest rate described in Table 2 of this rule.

(f) All other direct loans. Except as provided in OAR 340-054-0065(10), DEQ will provide the following interest rates for all other CWSRF loans:

(A) For loans with a maximum repayment period of up to 20 years, DEQ will provide the following interest rates as detailed in Table 1 of this rule.

Table # 1 OAR 340-054-0065 Interest Rates for Loans with Terms of Up to 20 Years				
	Rates (percent of base rate)			
Repayment Period:	0-5 Years	Over 5 up to 10 Years	Over 10 up to 15 Years	Over 15 up to 20 Years
<b>Borrowers</b>				
Small communities with less than statewide median household income	25	30	35	40
All other borrowers	25	45	50	55

(B) (Effective January 1, 2016) For loans with a maximum repayment period of up to 30 years, DEQ will provide the following interest rates as detailed in Table 2 of this rule.

Table # 2 OAR 340-054-0065 Interest Rates for Loans with Terms of Over 20 Years but No More Than 30 Years	
Borrowers	Rates (percent of base rate)
Small communities with less than statewide median household income	40
Communities other than small communities with less than the statewide median household income	55 plus an interest premium
Communities with equal to or more than the statewide median household income	55 plus an incrementally higher interest premium than for the borrower type listed directly above

Interest rate premiums as described in Tables 1, 2 and 3 of this division will be set so as to safeguard the perpetuity of the fund and will be reevaluated from time to time.

(g) Sponsorship option. When a sponsorship option is implemented within the scope of a construction loan, DEQ:

(A) Will calculate the debt service on the wastewater facility project based on subsection (f) of this section of the 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 (g)(A) of this section of the rule; and

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

(h) Bond proceeds for direct loans. DEQ may use bond proceeds that are matching funds for federal capitalization grants to fund direct loans at the interest rates listed in this section. Any change in the source of repayment for matching bonds will not affect this subsection's requirements.

(5) Interest accrual and payment period. Interest accrual begins when DEQ makes the first CWSRF loan disbursement to a borrower. A borrower must include all outstanding accrued interest with each loan repayment.

(6) Annual loan fee.

(a) Except as provided in subsection (b) of this section of the rule, a borrower must pay DEQ an annual loan fee of 0.5 percent on the unpaid loan balance specified in the payment schedule in its loan agreement. This annual loan fee is in addition to any other payments a borrower is required to make under its loan agreement.

(b) DEQ will not charge a borrower any annual loan fee for a planning loan.

(7) Commencement of loan repayment. A borrower must begin its loan principal and interest repayments within one year of the date the facility is operationally complete and ready for the purpose for which it was planned, designed, and built or DEQ determines that the project is completed.

(8) Loan term.

(a) A borrower must fully repay a loan in accordance with a repayment schedule determined by DEQ. DEQ will consider the useful life of the assets financed when determining the repayment schedule. The repayment term for:

(A) A planning loan will not exceed five years;

(B) A local community loan will not exceed ten years;

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

(D) Effective January 1, 2016, loan terms will not exceed 30 years after project completion.

(b) DEQ will allow prepayments at any time without penalty on all CWSRF loans except as specified in section (10) of this rule.

(c) A loan must be fully amortized by the maturity date of the loan.

(9) Minor variations in loan terms. DEQ may authorize minor variations in financial terms of loans described in this rule to facilitate administration and repayment of a loan.

(10) Leveraged loans.

(a) DEQ may fund loans with bond proceeds through a leveraged loan program under the following terms and conditions:

(A) Interest rates 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.

(B) Loan fees will be calculated in accordance with section (6) of this rule.

(C) Notwithstanding other provisions of this rule, DEQ 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.

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

(11) Additional subsidization (principal forgiveness). DEQ may provide additional subsidization in the form of principal forgiveness to the maximum extent allowed by the federal capitalization grant and in accordance with the criteria established in this section. A loan with principal forgiveness is subject to standard interest rates, fees, and loan terms as defined in this rule.

(a) Eligibility. Except as specified in subsection (b) of this section of the rule, the following applicants are eligible for principal forgiveness:

(A) Applicants that are a municipality or intermunicipal, interstate, or State agency and meet affordability criteria as specified in subsection (c) of this section of the rule;

(B) Applicants that are a municipality or intermunicipal, interstate, or State agency with a project, determined by DEQ, that implements a process, material, technique, or technology to address water-efficiency and energy-efficiency goals, to mitigate stormwater runoff, or to encourage sustainable project planning, design, and construction; or

(C) Applicants that are a municipality or intermunicipal, interstate, or State agency and that do not meet the requirements of subsection (a)(A) or (a)(B) in this section of the rule but have individual ratepayers who will experience financial hardship from a rate increase resulting from financing a project. Applicants qualifying under this section must have an established ratepayer hardship assistance program. DEQ will review the applicant's ratepayer hardship assistance program for duration and effectiveness.

(b) Ineligible Loans. The following types of loans are not eligible for principal forgiveness:

(A) Loans for projects that are not ready to proceed;

(B) Loan agreements that include incentives such as sponsorship option loans;

(D) Planning loans, except for planning loans for projects described in subsection (a)(B) of this section of the rule.

(c) Affordability Criteria. DEQ will use the following criteria to determine affordability, with the most weight added to subsection (c)(A) of this section of the rule:

(A) Distressed as calculated by the Oregon Distressed Index using the methodology described in OAR 123-024-0031; and

(B) Negative population trends as calculated by the annual American Community Survey.

(d) Additional subsidization allocation amount. DEQ may allocate or adjust the allocation of principal forgiveness every federal fiscal year as a percentage of the annual federal capitalization grant, not to exceed the maximum permitted by the federal allocation regulation. DEQ will determine the maximum allowable annual percentage allocation of principal forgiveness from time to time to safeguard the perpetuity of the CWSRF.

(e) Award Amount.

(A) Eligible applicants may receive principal forgiveness for up to fifty percent of their loan but not to exceed \$500,000.

(B) Applicants may only receive one principal forgiveness award per project.

(f) Award Reserves.

(A) DEQ will reserve seventy percent of the principal forgiveness allocation for applicants meeting the affordability criteria in subsection (a)(A) of this section of the rule.

(B) DEQ will reserve thirty percent of the principal forgiveness allocation for applicants with projects eligible under subsection (a)(B) of this section of the rule.

(C) At the close of the federal fiscal year, DEQ may reallocate any unawarded allocation of principal forgiveness in one reserve to the other reserve, and if after such reallocation unawarded allocation still remains, to those borrowers that are eligible under subsection (a)(C) of this section of the rule.

(g) Loan Term. Applicants eligible for principal forgiveness under the affordability criteria as specified in subsection (a)(A) of this section of the rule must take the longest term available for their loan. All other applicants may choose any term permitted in section (8) of this rule. A borrower may prepay its loan without penalty.

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 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; DEQ 11-2012, f. & cert. ef. 12-14-12

**340-054-0071**

**Debt Obligation Purchase**

DEQ may use the CWSRF to buy a public agency's debt obligation subject to all of the following limitations:

- (1) The debt was incurred after March 7, 1985.
- (2) The debt obligation does not exceed 20 years except for a bond purchase as specified in OAR 340-054-0072.
- (3) DEQ will not use the purchase of a debt obligation to refinance a pre-existing CWSRF loan or other debt obligation except as specified in OAR 340-054-0072(5)(b).

Stat. Auth.: ORS 468.020 & 468.440  
Stats. Implemented: ORS 468.423 - 468.440  
Hist.: DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14

**340-054-0072**

**Bond Purchase**

- (1) Application requirements. All application requirements for a CWSRF loan as specified in OAR 340-054-0022 apply to a bond purchase under this rule.
- (2) Intended Use Plan and project priority list. All applications for a bond purchase are subject to IUP and project priority list development in the same manner as specified in OAR 340-054-0025.
- (3) Project ranking criteria. All applicants for a bond purchase will be ranked based on the point sum from the criteria specified in OAR 340-054-0026 and OAR 340-054-0027.
- (4) Reserves, CWSRF general fund and project funding. DEQ will allocate reserves and CWSRF general funds for a bond purchase in the same manner as specified in OAR 340-054-0036.
- (5) Requirements for a bond purchase.
  - (a) Clean Water Act plans. DEQ will only purchase a bond whose proceeds are used to finance a project that is consistent with plans developed under sections 303(e), 319 or 320 of the Clean Water Act.
  - (b) Refunding an existing CWSRF loan or debt obligation is not an eligible use of the proceeds of a bond purchase for treatment works unless all of the following apply:
    - (A) All of the following conditions must be met on February 1, 2014:

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

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

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

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

(B) The public agency must:

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

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

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

(i) The useful life of the asset, or

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

(D) The interest rate for the bond for treatment works DEQ purchases as described in subsection (b) of this section of the rule is determined under subsection (b) of section (7) of this rule.

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

(6) Conditions for bond purchase. The terms, conditions and requirements set out in OAR 340-054-0060 apply to a bond purchase.

(7) Bond purchase, terms and interest rates.

(a) Bonds. A bond DEQ purchases under this rule must be a revenue bond for a term not to exceed 30 years and meet the requirements specified in OAR 340-054-0065(2).

(b) Interest rates. OAR 340-054-0065(4)(b) specifies the base rate for a bond purchase. DEQ will provide the following interest rates for bond purchases:

(A) For bond purchase agreements for treatment works executed between February 1, 2014 and January 31, 2016, DEQ will calculate the interest rates in accordance with Table 3 of this section.

**Table # 3**  
**OAR 340-054-0072**  
**Bond Purchase Interest Rates**

Borrowers	Rates (percent of base rate)
Small communities with less than statewide median household income	40
Communities other than small communities with less than the statewide median household income	55 plus 0.25%
Communities with equal to or more than the statewide median household income	55 plus 0.5%

(B) For bond purchase agreements executed on or after February 1, 2016, interest rates will be calculated in accordance with OAR 340-054-0065(4)(f)(B).

(c) Interest accrual and payment. OAR 340-054-0065(5) sets the terms for interest accrual and payment for bond purchases under this rule.

(d) Annual fee. OAR 340-054-0065(6) specifies the annual fee for a bond purchase.

(e) Commencement of bond repayment. OAR 340-054-0065(7) prescribes when a public agency must begin principal and interest repayment for a bond DEQ purchased under this rule.

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

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

(h) Principal forgiveness. DEQ may provide principal forgiveness for a bond purchase in the same manner as for a loan under OAR 340-054-0065(11).

Stat. Auth.: ORS 468.020 & 468.440

Stats. Implemented: ORS 468.423 - 468.440

Hist.: DEQ 2-2014, f. 1-28-14, cert. ef. 2-3-14

	<b>Summary of Recommendations</b> <b>Clean Water State Revolving Fund Advisory Committee</b> <b>April 15, 2015</b>
	Oregon Department of Environmental Quality Headquarters Office 811 SW Sixth Ave. Portland OR 97204
	Contact: Larry McAllister

**Background**

On June 10, 2014, President Obama signed into law the Water Resources Reform and Development Act of 2014 . Among its provisions are amendments to Titles I, II, V, and VI of the Federal Water Pollution Control Act (Clean Water Act) that directly impact the Clean Water State Revolving Fund Programs. Some amendments to the Clean Water Act take effect Oct. 1, 2014 and others, September 2015.

To determine the impact of the amendments on the Oregon CWSRF, DEQ staff reviewed EPA’s initial guidance on the impacts of the amendments to the CWSRF, consulted with State Assistant Attorney Generals, and participated in EPA training on the amendments. DEQ used this information to analyze the optional and required program policy changes that range from rule and statute changes to internal program procedures revisions. It was determined that necessary changes to statute and rule would require rulemaking during the 2015 and 2017 sessions of the Oregon Legislature.

**Process**

In December 2014, DEQ convened its standing CWSRF Advisory Committee to advise the changes to administrative rules and statute. Members of the Advisory Committee represented CWSRF interests from federal and state agencies, local governments, water and wastewater districts and utilities, watershed organizations, environmental advocacy groups, local conservation districts, and the financial sector. The Advisory Committee met five times between December 2014 and April 2015 and provided DEQ with recommendations for how to implement CWSRF-related changes to the Clean Water Act amendments for the 2015 CWSRF rulemaking and legislative session.

In order to aid in recommendations and decisions, DEQ staff provided information to the Advisory Committee including research and analysis of policy options. The analysis included data such as: characteristics of Oregon CWSRF borrowers and loans, Oregon community demographics, hypothetical examples of the impact of proposed policies on existing borrowers’ budgets, and research on program policies in other states’ CWSRF programs. DEQ developed financial modeling scenarios reflecting the impact of policy options on the fund’s perpetuity. The information below summarizes the recommendations of the Advisory Committee for the 2015 CWSRF rulemaking and legislative session and identifies the topics for consideration during the 2017 CWSRF rulemaking and legislative session.

**2015 Rulemaking: Changes in rule to comply with the Clean Water Act**

The following summarizes the recommendations for changing rule related to four Clean Water Act amendment topics during the 2015 CWSRF rulemaking and one recommendation for changing statute during the 2015 legislative session.

### **1). Additional Subsidization. Section 603(i)**

DEQ must change permanent rules to include affordability criteria by Sept. 30, 2015 to match the Clean Water Act, even if DEQ chooses not to provide additional subsidies to borrowers. The Clean Water Act affordability criteria include: income, unemployment data, population trends, and other data determined by the State, including economically distressed areas. If DEQ intends to continue to subsidize loans, a permanent rule change is required to allow this along with considerations around awarding process and eligibilities.

#### **Recommendations:**

Affordability criteria:

- "Distressed" as detailed by the Distressed Index, calculated by the Oregon Business Development Department that includes following data: income, unemployment, education, payroll, poverty, and;
  - Negative population trends used as a less weighted criteria and for tie breakers.
- Additional Subsidization Amount:
- Provide additional subsidization in the form of principal forgiveness.
  - Provide up to 18 percent of the capitalization grant each year, or as determined by federal allocations.
  - In order to avoid the bypass awarding process from previous awarding policies, "roll-over" any unused percentage of principal forgiveness and add it to the next year's allocation amount, with the total aggregate percentage not to exceed federal guidelines, currently 30 percent.

Eligibility Requirements:

- Those applicants that meet affordability criteria; or
- Projects considered "green projects" that encourage sustainable project planning, design, and construction; or
- Applicants that do not meet the affordability criteria but have individual ratepayers that will experience hardship from the increase in rates necessary to finance the project or activity. In order to be eligible by providing assistance to these hardship ratepayers, applicants must provide evidence in their application and funding agreement of the existence and effectiveness of their hardship assistance program in the past, present, and into the future.

Awarding Process:

- Priorities for awarding principal forgiveness are demonstrated in "reserve" allocation.
- Create a larger reserve amount, award 70 percent of total principal forgiveness for each grant year to those that meet affordability criteria and are ready to proceed.
- Leftover smaller reserve, 30 percent, awarded for green projects as they are ready to proceed.
- Allocation amount from affordability criteria applicant and green projects applicant reserves can be "transferred" at the end of the grant year if funds are remaining in one reserve and there are projects that are eligible and ready to proceed in the other reserve. If there are leftover dollars at the end of the grant year after transfers, use evaluation criteria to determine the best use of these dollars, choosing from a menu of options including: "roll-over" the leftover percentage of remaining principal forgiveness to the next year, award additional principal forgiveness to a community that has already received principal forgiveness because

they meet the affordability criteria, or award it to a borrower to assist in hardship ratepayer cases.

- Caps on amount of principal forgiveness at 50 percent of the total loan amount in an amount not to exceed \$500,000 per loan.

Other Considerations:

- Those applicants that qualify for principal forgiveness by meeting the affordability criteria must take the longest term to encourage possible savings be passed onto ratepayers; for green projects applicants, they may choose their term as applicable under current law. Borrowers can always choose to repay early with no penalty.
- Limit one principal forgiveness award per project.
- The only planning loans eligible for principal forgiveness will be for green projects.
- No principal forgiveness awarded to projects that include other incentives, such as sponsorship option and interim loans.

## **2). Certification of Cost and Effectiveness. Section 602(b)(13)**

This is a new requirement that applies to all non-planning loans after Oct. 1, 2015 regardless of funding source or project type. Loan recipients must self certify that they have evaluated the cost and the effectiveness of the project, and they have selected an option that maximizes water and energy efficiencies. DOJ recommends adding this in rule.

### **Recommendations:**

- DEQ collaboration with Infrastructure Finance Authority, IFA; Rural Community Assistance Corporation, RCAC; and United States Department of Agriculture – Rural Development, USDA to make amendments to existing inter-agency facility planning document "Preparing Wastewater Planning Documents and Environmental Reports for Public Utilities ... (5/2013)" to include water and energy conservation considerations into a cost and effectiveness analysis for all non-planning projects.
- The analysis will be developed so it encourages a balance in evaluating options and maintains a checklist for types of options to evaluate. The balance will be facilitated through a triple-bottom-line approach, and criteria will include conservation considerations.
- IFA, RD, RCAC and DEQ will develop the proposed amendments through summer 2015 and will consider the following in the development of the analysis procedure: "tiers" in the level of analysis based on complexity of project, quantifying the analysis of options in a way that does not pit cost against conservation considerations when possible, and a selection process that is flexible to include community-specific considerations.
- Certification and compliance processes will be developed and included in the updated document.
- Drafts will be available through summer 2015 and finalized in September 2015.

## **3). Project eligibilities. Section 603(c)(1-11)**

Clean Water Act Section 603(c)(1-3) lists projects that are eligible for assistance per section 212 and implementing 319 and 320 projects, these eligibilities have not changed with Clean Water Act amendments. However, the new Section 603(c)(4-11) identifies eight additional eligible borrower and project types. State CWSRF programs have the choice to add these new eligibilities into their programs. Many of the additional borrowers and project types listed in Section 603(c)(4-11) have

been eligible in Oregon's CWSRF under the umbrella of sections 212, 319 and 320, and under ORS 468.429(a)(b)(c) and OAR 340-054-0015(1-13).

**Recommendations:**

- All eligibilities as listed in Clean Water Act 603(c)(1-10) should be reflected in rule, including the "construction" of new decentralized wastewater systems.
- When applicants are considering the construction of new decentralized systems, there must be a "second screen" for decision making to determine if building a new decentralized system or a cluster of decentralized systems is the best choice amongst all of the alternatives; additional decision making must incorporate environmental impact considerations. This is especially important to include in the local community loan agreement and project scoping.
- Consider 2017 statute changes to expand eligibilities to eligible non-profits to provide technical assistance and to expand the definition of treatment works to include acquisition of land necessary for construction. More detailed discussions in fall 2015 with the Advisory Committee are necessary to make this decision.

**4). 30 year loan term. Section 603(d)(1)(A)**

The Clean Water Act amendments allow loans up to the lesser of 30 years or the projected useful life of the asset. This would require a rule and statute change.

**Recommendations:**

- Loan terms up to the lesser of 30 years or the useful life of the asset, available to all new eligible borrowers.
- Interest rate premium added in a tiered fashion based on socioeconomic status of borrowers, as follows: No interest premium: small communities with less than statewide median household income; 0.5 percent premium - communities other than small communities with less than statewide median household income; and 1 percent premium - communities with equal to or more than statewide median household income.
- No refinancing of existing loans to terms up to the lesser of 30 years or the useful life of the asset except: allow for the 19 loans, representing 14 borrowers who were identified in the 2013 longer-term financing rulemaking as eligible to refinance their existing CWSRF loans and who have formally accepted the restructuring offer to convert their 20 year loans term into 30 year bond purchase agreements the additional option to restructure into a loan term of up to 30 years or the useful life of the asset, whichever is less. This is a one time, limited-period offer.
- Premiums re-evaluated periodically to ensure protective of the fund and competitive.
- No limit on allocation and all priorities of program apply.
- House Bill 2451 in the 2015 legislative session; this bill also extended eligibility for 30 year bond purchases with a January 2016 effective date.

**2015 Rulemaking: "Housekeeping" rule changes**

The following three housekeeping rule change items are recommended for the CWSRF 2015 rulemaking.

**Recommendations:**

- Make minor housekeeping changes to rules as necessary, including deleting rules that are no longer effective after the mandated five year review.

- Allow a municipality's full faith and credit pledge which does not require the borrower's unlimited ad valorem taxing power.
- Align with the Clean Water Act to require all funding agreements begin repayment within one year of project completion and be fully amortized by the maturity of the loan term.

### **2015 non-rulemaking items: program document and process changes**

The following three Clean Water Act provisions require changes to program documents and procedures:

#### **1). Qualifications based procurement. Section 602(b)(14)**

This is a new equivalency requirement. CWSRF programs must demonstrate that a procurement process for Architectural and Engineering contracts that are equivalent to 40 U.S.C 1101 were executed on loans in an amount equal to the annual federal capitalization grant (equivalency). DEQ must also identify the loan or loans that will meet *all* of the equivalency requirements; requirements cannot be split across different loans. Applies to loans made under capitalization grants awarded after Oct. 1, 2014.

#### **Recommendations:**

- Incentivize projects that meet equivalency requirements: first come, first serve of applicants that are ready to proceed and meet equivalency requirements get a 1 percent interest rate up to the max loan amount. Prioritize that it's one project, but could be multiple projects to get to capitalization grant amount.
- Use state procedures for procurement, as detailed in ORS 279C.100, which are equivalent to the federal requirement for qualifications based procurement.
- Advisory Committee workgroup recommends incentivizing as a pilot process; evaluate and adjust after one year.

#### **2). Fiscal sustainability. Section 603(d)(1)(E)**

This is a new requirement applying to all loans for the repair, replacement or expansion of treatment works projects. Loan recipients need to certify that they have developed and implemented a fiscal sustainability plan. It applies to all applications received after Oct. 1, 2014.

#### **Recommendations:**

- Applicants self-certify with DEQ's certification process, they are able to do so at a couple of times during the loan process.
- DEQ collects the fiscal sustainability plans and provides guidance for completing them but doesn't review them.
- United States Department of Agriculture's Preliminary Engineering Report can be used to meet this requirement for interim funding.

#### **3). Cost of administration. Section 603(d)(7)**

The Clean Water Act provides a menu of options for funding costs of administering the fund and conducting activities under Title VI. ORS 468.431 established an administration fund for these purposes. Selecting an option does not require rule or statute changes, however, if DEQ chooses to change eligible costs in its administrative fund that would require a statute change (see "Fees" in below 2017 rulemaking section).

**Recommendations:**

- No change at this time to how DEQ funds the costs of administering the fund, which is 4 percent of capitalization grant.
- This will be an iterative process; DEQ will re-evaluate these procedures regularly.

**2017 Rulemaking: Optional rule and statute changes to align with the Clean Water Act**

The following four Clean Water Act amendment topics require changes to rule and statute and should be considered for 2017 CWSRF rulemaking and legislative session.

**1). Fees. Section 602(b)(12)**

The Clean Water Act allows a certain portion fees to be used for loans and other activities eligible for assistance from the fund. DEQ could consider allowing a portion of the fee account to be used to pay for state match, funding loans and funding other project assistance. Allowing this option in the program would require a statute change.

**Recommendations:** To be determined for 2017 CWSRF rulemaking and legislative session.

**2). Loans to nonprofits to provide technical assistance. Section 603(c)(11)**

The Clean Water Act allows expanded eligibility to nonprofit entities as loan recipients to provide technical assistance. This requires a permanent rule change and a statute change.

**Recommendations:** To be determined for 2017 CWSRF rulemaking and legislative session.

**3). Perpetuity. Section 602(b)(11).**

This provision requires the management of the CWSRF in such a way that the funds will be available in perpetuity for eligible activities under federal law. As an alignment issue, a change to statute to reflect the new Clean Water Act language would eliminate future needs to change the statute regarding perpetuity.

**Recommendations:** To be determined for 2017 CWSRF rulemaking and legislative session.

**4). Eligible land purchases. Title II, 212**

The definition of treatment works (Section 212) has been modified to include “land necessary for construction.” The EPA guidance interprets this to include land for staging. The statute would require a change in order for DEQ to broaden the definition to include eligible land acquisitions.

**Recommendations:** To be determined for 2017 CWSRF rulemaking and legislative session.