

**The Oregon Administrative Rules contain OARs filed through October 15, 2009**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**DIVISION 54**

**CLEAN WATER STATE REVOLVING FUND PROGRAM**

**340-054-0005**

**Purpose**

(1) These rules establish procedures the Department will follow to make funding through the Water Pollution Control Revolving Fund, called the Clean Water State Revolving Fund (CWSRF), available to public agencies to plan, design and construct sewage facilities, nonpoint source control and estuary management projects.

(2) These rules are intended to do the following:

- (a) Provide loans to projects that enhance or protect water quality;
- (b) Ensure that loans are made to public agencies capable of repaying such loans;
- (c) Establish an interest rate below market rate so that the loans are affordable;
- (d) Provide loans to communities of all sizes needing to finance projects; and
- (e) Specify the types of projects for which loans may be made.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.425

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

**340-054-0010**

**Definitions**

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

- (1) "Allocation Cycle" means the funding cycle as determined by the Department.

- (2) "Applicant" means an eligible Clean Water State Revolving Fund (CWSRF) applicant.
- (3) "Available CWSRF" means the amount in the Clean Water State Revolving Fund minus monies for the Clean Water State Revolving Fund administration and prior obligations.
- (4) "Borrower" means a CWSRF loan recipient.
- (5) "Change Order" means a written order and supporting information from the Borrower to the Borrower's contractor authorizing an addition, deletion or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.
- (6) "Checklist of Exhibits and Requirements" means the most recent version of the list of all the exhibits and required documents that must be submitted in conjunction with the CWSRF application and then be reviewed and approved by the Department before a loan agreement is executed.
- (7) "Clean Water Act" means the federal Clean Water Act, 33 USC §1251 - §1387.
- (8) "Clean Water State Revolving Fund" or CWSRF means the Water Pollution Control Revolving Fund established under ORS 468.427.
- (9) "Collector Sewer" means that portion of the public sewerage system that is installed primarily to receive wastewater directly from individual residences and other individual public or private structures.
- (10) "Combined Sewer" means a sewer that is designed as both a sanitary and a storm water sewer.
- (11) "Comprehensive Conservation Management Plan" (CCMP) means a plan developed for a designated National Estuary, pursuant to 33 USC § 1330 of the Clean Water Act.
- (12) "Construction" means the erection, installation, expansion or improvement of sewage facilities, nonpoint source control and estuary management projects.
- (13) "Default" means nonpayment by the Borrower of the principal or interest amount of a CWSRF loan on the payment's due date, failure to comply with the terms or conditions of the CWSRF loan, a formal bankruptcy filing or other written admission of inability to pay CWSRF obligations.
- (14) "Department" means the Oregon Department of Environmental Quality.
- (15) "Director" means the Director of the Oregon Department of Environmental Quality.
- (16) "Documented Health Hazard" means an area-wide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment as demonstrated by sanitary surveys or other data collection methods and

confirmed by the Oregon Office of Public Health Services, within the Department of Human Services pursuant to ORS 222.850 to 222.915, or 431.705 to 431.760, by the Department pursuant to OAR 340-071-0130(3), by either agency pursuant to OAR 660-011-0060, or by county health officials pursuant to applicable local ordinances.

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

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

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

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

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

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

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

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

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

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

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

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

(29) "Local Community Loan" means a loan to a public agency that will then be used by the public agency to establish a local financial program to address estuary management efforts or nonpoint source control activities.

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

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

(32) "Nonpoint Source Control" means the implementation of a nonpoint source pollution management activity under section 319 of the Clean Water Act and 40 CFR § 35.3115(b) and included in the most recent edition of the Oregon Nonpoint Source Control Program Plan.

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

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

(35) "Operation" means the control of sewage collection system pumping stations and treatment unit processes within a sewage facility. Operation also means the control of equipment and processes of nonpoint source control and estuary management projects. Furthermore, operation means the financial and personnel management, records, laboratory control, process control, safety, and emergency planning for these same facilities and projects.

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

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

(38) "Planning" means monitoring, data collection and measurement, evaluation, analysis, security evaluations, report preparation, environmental review, public education and review process and any other activity leading to a written plan for the provision of sewage facilities, nonpoint source control and estuary management projects intended to remediate an existing or anticipated water pollution problem, but excluding the preparation of detailed bid documents for construction.

(39) "Point Source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

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

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

(42) "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances necessary for the ongoing operation during the design or useful life, if longer, of a sewage facility, nonpoint source control or estuary management project to maintain the facility or project for the purpose for which it was designed and constructed. Replacement does not mean the replacement of the facility or project at the end of its useful life.

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

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

(45) "Sewage Collection System" means publicly owned pipelines, conduits, pumping stations, force mains and any other related structures, devices or equipment used to convey wastewater to a sewage treatment facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.423

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

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

#### **Project Eligibility**

(1) A public agency may apply for a CWSRF loan for up to 100% of the cost of the following types of projects and project related costs:

(a) Planning for sewage facilities, nonpoint source control or estuary management projects including supplements or updates;

(b) Secondary sewage treatment facilities;

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

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

(e) Facilities related to biosolids disposal and management;

(f) Interceptors, force mains and pumping stations;

(g) Identification and correction of infiltration and inflow;

(h) Major sewer replacement and rehabilitation necessary to maintain the structural integrity and function of the sewer;

(i) Combined sewer overflow correction, if required to protect sensitive estuarine waters or to comply with Department water quality statutes, rules or permits, provided the project is the most cost effective alternative;

(j) New collector sewers required to alleviate documented water quality problems or to serve an area with a documented health hazard;

(k) Storm water control facilities intended to reduce infiltration or inflow to a sanitary sewer system.

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

(m) Estuary management efforts that address environmental quality directly related to water quality.

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

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

(p) Wastewater reuse projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.423 - ORS 468.440

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

### **340-054-0020**

#### **Uses of the Fund**

The CWSRF may be used only for the following purposes:

- (1) To make loans, fund reserves for CWSRF loans, purchase bonds or acquire other debt obligations.
- (2) To pay CWSRF program administration costs to the extent allowed by federal law.
- (3) To earn interest on fund accounts.
- (4) To establish reserves for bonds issued by the state for use by the fund.
- (5) To pay principal and interest of bond obligations sold to benefit the fund.

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.429 & ORS 468.431

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

### **340-054-0021**

#### **Expedited Loans**

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

- (1) General Requirements and Provisions.
  - (a) Applications will be accepted by the Department at any time.
  - (b) All applicants for expedited loans must submit:

- (A) A completed application on a form provided by the Department;
- (B) Evidence that the Applicant has authority to undertake the project;
- (C) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion);
- (D) A Land Use Compatibility Statement (LUCS) in accordance with OAR 340-018-0030(5); and
- (E) Any other information requested by the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.429 & ORS 468.439

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

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

#### **Local Community Loans**

The Department will administer local community loans with public agencies for the financing of estuary management efforts and nonpoint source control activities. Applications may be

submitted in response to the Department's annual solicitation or at anytime during the program year.

(1) General Requirements and Provisions. Applicants applying for CWSRF financing for local community loans must submit:

- (a) A fully executed and complete application on a form provided by the Department;
- (b) A project narrative, as defined by the Department, describing how the project will implement an estuary management effort or a nonpoint source control activity;
- (c) A completed Checklist of Exhibits and Requirements and associated documents;
- (d) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department, in its discretion);
- (e) A Land Use Compatibility Statement (LUCS) in accordance with OAR 340-018-0030(5);
- (f) Evidence that the Applicant has the authority to undertake the project;
- (g) A projected program cash flow based on the anticipated number of local loans, their repayment schedule, the amount and timing of Department disbursements and the amount and timing of repayments to the Department; and
- (h) Any other information requested by the Department.

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

- (a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);
- (b) The maximum loan term must be in accordance with OAR 340-054-0065(10)(b);
- (c) The interest rate must be as indicated in OAR 340-054-0065(5)(c);
- (d) Loan repayment (as defined in the loan agreement) must begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9); and
- (e) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).

Stat. Auth.: ORS 468.423 - ORS 468.440  
Stats. Implemented: ORS 468.429 & ORS 468.439  
Hist.: DEQ 10-2003, f. & cert. ef. 5-27-03

**340-054-0023**

## **Planning Loans**

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

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

- (a) A completed planning loan application using a form provided by the Department;
- (b) Evidence that the Applicant has authority to undertake the project;
- (c) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion); and
- (d) Any other information requested by the Department.

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

- (a) The maximum loan amount will be determined by the Department, but may not exceed funds available in the reserve as per OAR 340-054-0025(6)(c)(C);
- (b) The maximum loan term must be in accordance with OAR 340-054-0065(10)(a);
- (c) The loan repayment period (as defined in the loan agreement) will begin on any outstanding principal and interest in accordance with OAR 340-054-0065(9);
- (d) The interest rate for planning loans must be in accordance with OAR 340-054-0065(5)(b); and
- (e) Planning loans are exempt from the annual loan fee described in OAR 340-054-0065(7).

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.429 & ORS 468.439

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

## **340-054-0024**

### **Design Loans and Construction Loans**

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

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

- (a) A fully executed and complete application on a form provided by the Department;
- (b) A completed Checklist of Exhibits and Requirements and associated documents;
- (c) Evidence that the Applicant has the authority to undertake the project;
- (d) Audited financial statements for the previous three years and the Applicant's current budget (unless waived by the Department in its discretion);
- (e) All pertinent requirements listed in OAR 340-054-0035; and
- (f) Any other information requested by the Department.

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

- (a) The maximum loan amount must be in accordance with OAR 340-054-0025(6);
- (b) If not implementing a sponsorship option, the interest rate and corresponding loan terms for design or construction loans must be in accordance with OAR 340-054-0065(5)(f), or 340-054-0065(5)(g).
- (c) The loan repayment period (as defined in the loan agreement) must begin on the outstanding principal and interest balance in accordance with OAR 340-054-0065(9); and
- (d) The annual loan fee must be imposed on any unpaid balance in accordance with OAR 340-054-0065(7).

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

- (a) A public agency (sponsoring community) may apply to the Department for a CWSRF loan to finance a sewage collection system or sewage treatment facility project combined with a water resource activity. Within this sponsorship option, the CWSRF program may fund both projects under a single CWSRF loan if the Department determines that the water resource activity meets program eligibility, funds are available, and the ranking of the sewage project allows its funding.
- (b) The interest rate for the consolidated financing will be reduced whenever possible to a rate resulting in the semi-annual payment for the joint project being equal to the expected semi-

annual payment with a traditional CWSRF loan for the sewage collection system or sewage treatment facility project only.

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

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

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

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

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

(D) Any other information requested by the Department.

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

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

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

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

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.429 & 468.439

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

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

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

The Department will periodically, but not less than annually, develop and submit an Intended Use Plan (IUP) to EPA as described in section 606 of the CWA and 40 CFR § 35.3150. The IUP will describe the proposed uses of the CWSRF and will include a project priority list numerically

ranking all eligible applications received. The Department will develop the IUP using the following processes in this rule.

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

(2) Applications: For a project to be considered for the project priority list, an Applicant must submit a completed application; the application must address an imminent, actual or threatened water quality problem; and the project must be eligible for funding under OAR 340-054-0015.

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

(4) Project Priority List Ranking:

(a) The Department will develop a project priority list by ranking all eligible proposed projects using the criteria in **Table 1** of this rule. Projects will be numerically ranked based on the sum of the points awarded each proposed project. A maximum of one hundred (100) points is available for a proposed project.

(b) The Department will update the project priority list and the IUP at least every four months or upon receipt by the Department of five eligible applications, whichever timeframe is shorter. If no eligible applications are received during a four month period, the project priority list will not be updated.

## **TABLE 1**

### CWSRF Project Ranking Criteria

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Category 3:** Other considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Allocation of Funds:

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

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

(c) The Department will assign projects on the priority list to an appropriate reserve or to the CWSRF general fund. Requests for increases to existing loans will be awarded first. Increases will be awarded from the appropriate reserve or the general fund. Following any allocations for increases, the Department will award loans to projects within each reserve and the general fund for new projects as described in sections (6)(c)(A), (6)(c)(B), (6)(c)(C) and (6)(c)(D)

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

still remaining in the expedited loan reserve on May 31 of the program year can be reallocated to the CWSRF general fund.

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

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

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

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

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

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

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

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

(7) Project Priority List Modification:

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

(A) Ranked projects may remain on the project priority list for up to 36 months while pursuing funding. After 36 months, the Department will notify the Applicant in writing that the project is being removed from the list.

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

(C) The Department may provide one six-month extension to applicants requesting to remain on the list beyond the 36 month limit. Applicants requesting an extension must submit a progress report indicating the status of their effort in pursuing CWSRF financing and an updated time frame indicating when they expect to have completed all requirements necessary to be awarded funding.

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

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 1-2009(Temp), f. 4-27-09, cert. ef. 5-1-09 thru 10-27-09

### **340-054-0035**

#### **Final Stage of Application Process for Design Loans or Construction Loans**

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

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

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

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

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

(d) Any other information requested by the Department.

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

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

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

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

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

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

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

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

### **340-054-0055**

#### **Loan Approval and Review Criteria**

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.433 & ORS 468.437

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

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

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

Each loan agreement will include conditions applicable to the type of project being financed, which include, but are not limited to, the following:

(1) Accounting. The 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.

(2) Records. The Borrower must retain project files and records for at least three years after performance certification or project completion as determined by the Department. Financial files and records must be retained until the loan is repaid in full.

(3) Wage Rates. The Applicant must ensure compliance with applicable federal or state wage rates, if any, for construction projects.

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

(5) Plans and Specifications. For the construction of a sewage collection system or a sewage treatment facility subject to OAR chapter 340, division 052, the Borrower must obtain the Department's approval of project plans and specifications before commencement of construction.

(6) Inspections and Progress Reports.

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

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

(7) Loan Amendments. Changes in project work that are consistent with the objectives of the project and within the scope and funding level of the loan do not require the execution of a formal loan amendment. A loan amendment will be required in the following situations:

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

(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.

(8) Change Orders. The Borrower must submit Change Orders to the Department for engineering and financial review. The Department will approve or reject the Change Orders based on the loan eligibility of the project modifications and on its engineering value in accordance with OAR 340-052-0015.

(9) Project Performance Certification for a sewage collection system or sewage treatment facility. The Borrower must submit to the Department a Project Performance Certification that meets the requirements of the CWSRF Procedures Manual (February 1, 2008) within the time frame specified by the Department.

(10) Eligible Construction Costs. Loan disbursements for construction costs will be limited to work that complies with plans, specifications, change orders and addenda approved by the Department.

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

(12) Contract and Bid Documents. The Borrower must submit a copy of the awarded contract and bid documents to the Department, including a tabulation of all bids received.

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

(a) An External Audit. Within one year after Performance Certification, the Borrower must submit an audit of the project expenditures consistent with Generally Accepted Accounting Principles conducted by a certified auditor. The Borrower will pay for this audit.

(b) Internal documentation. The Borrower must submit to the Department:

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

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

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

(15) Default Remedies. Upon default by a Borrower, the Department may:

(a) Pursue any remedy available at law or in equity.

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

(c) Set and collect utility rates and charges.

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

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

(17) Effect of Approval or Certification of Documents. Review and approval of facilities plans, design drawings and specifications, or any other documents by or for the Department does not relieve the Borrower of responsibility to properly plan, design, build and effectively operate and maintain a sewage facility, nonpoint source control or estuary management project as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications, or other sub-agreement documents. The Department is not responsible for verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.

(18) Reservation of Rights:

(a) Nothing in this rule prohibits a Borrower from requiring more assurances, guarantees, indemnity or other contractual requirements from any party performing project work; and

(b) Nothing in the rule affects the Department'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.

(19) Other Provisions. CWSRF loan agreements will contain such other provisions as the Department may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

Stat. Auth.: ORS 468.423 - 468.440

Stats. Implemented: ORS 468.433 & 468.437

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 31-1989(Temp), f. & cert. ef. 12-14-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; Administrative Correction; DEQ 10-2003, f. & cert. ef. 5-27-03; DEQ 2-2008, f. & cert. ef. 2-27-08

**340-054-0065**

## **Loan Terms and Interest Rates**

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

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

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

(b) A loan secured by a bond or other obligation of the Borrower that is not subject to appropriation and has been rated Investment Grade by Moody's Investor Services, Standard and Poor's Corporation or another national rating service acceptable to the Department.

(c) A Revenue Secured Loan that complies with section (2) of this rule.

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

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

(2) Revenue Secured Loans. These loans must:

(a) Be represented by a properly executed loan agreement, bonds or other unconditional obligations to pay from specified revenues that are pledged to the Borrower; the obligation to pay may not be subject to the appropriation of funds.

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

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

(B) All debt service.

(C) All other financial obligations (such as contributions to reserve accounts) imposed in connection with prior lien obligations.

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

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

(c) Contain a reserve provision requiring the Borrower to maintain a pledged reserve that is dedicated to the payment of the CWSRF loan and meets the following requirements:

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

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

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

Coverage Factor\*--Reserve Percentage\*\*

Option 1: 1.05:1--100%

Option 2: 1.15:1--75%

Option 3: 1.25:1--50%

Option 4: 1.35:1--25%

\*Net Income to Debt Service

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

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

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

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

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

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

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

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

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

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

(5) Interest Rates:

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

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

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

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

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

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

- (A) 45% of the base rate (with a maximum repayment period of 10years);
- (B) 55% of the base rate (with a maximum repayment period of 20 years);
- (g) All Other Direct Loans. Except as provided in OAR 340-54-0065(12), all other CWSRF Loans will be made at one of the following interest rates:
- (A) 25% of the base rate (with a maximum repayment period of 5 years);
- (B) 55% of the base rate (with a maximum repayment period of 10 years);
- (C) 60% of the base rate (with a maximum repayment period of 15 years);
- (D) 65% of the base rate (with a maximum repayment period of 20 years).
- (h) Sponsorship option. When the sponsorship option is implemented in conjunction with a construction loan, the resulting reduced interest rate is defined as a rate calculated to approximate the semi-annual payment for a loan obtained to construct the sewage collection system or sewage treatment facility by itself, or a one percent interest rate, whichever is higher.
- (i) Bond proceeds that are matching funds for federal capitalization grants may be used to fund direct loans at the interest rates listed in this section. This subsection will not be affected by any change in the source of repayment for matching bonds.
- (6) Interest Accrual and Payment Periods. Interest accrual begins at the time of each loan disbursement from the CWSRF to the Borrower. All outstanding accrued interest will be included with each loan repayment.
- (7)Annual Fee. The Borrower must pay the necessary and reasonable costs of administering the fund through the loan's Annual Fee. An annual fee of 0.5% of the unpaid balance will be charged on each loan, except planning loans, during the repayment period. This fee is due and payable in addition to the payments identified in the loan agreement's payment schedule.
- (8) Review of interest rates and fees. The interest rates on CWSRF loans described in OAR 340-054-0065(5) of this rule will be effective for all loan agreements executed on or after June 1, 2003.
- (9) Commencement of Loan Repayment. Principal and interest repayments on loans will begin within one year of the date of Initiation of Operations or project completion, as determined by the Department.
- (10) Loan Term. All loans must be fully repaid within 20 years of the date of Initiation of Operations or project completion, in accordance with a schedule determined by the Department. Generally, the loan repayment term will be no longer than the useful life of the assets financed and will be based on the Borrower's ability to pay.

- (a) The loan term for planning loans will not exceed five years.
- (b) The loan term for local community loans will not exceed ten years.
- (c) The loan term for urgent repair loans will not exceed ten years.
- (d) The loan term for discretionary loans will not exceed twenty years
- (e) Loan terms for emergency loans, design loans or construction loans are described in OAR 340-054-0065(5)(g).
- (f) Loan terms for proactive design loans or construction loans are described in OAR 340-054-0065(5)(f). Prepayments will be allowed at any time without penalty on all CWSRF loans except as provided for in OAR 340-054-0065(12) of this rule.

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

(12) Leveraged Loans. The Department may:

- (a) Increase the size of the fund by selling state bonds to be repaid and secured by CWSRF loan repayments, reserves and reserve interest earnings.
- (b) Fund loans with bond proceeds as a part of a leveraged loan program with the following terms and conditions:
  - (A) Selling bonds to leverage the CWSRF program will increase the Department's ability to provide loan assistance to help public agencies comply with the Department's mandates.
  - (B) Interest rates on leveraged loans will be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates will be fixed at 65% of the base rate.
  - (C) Loan fees for leveraged loans will not exceed the amount charged for direct loans of the same size and repayment period.
  - (D) Costs of bond issuance and related transaction costs will be paid out of bond proceeds to the extent permitted by law.
  - (E) Notwithstanding other provisions of this rule, the Department may make changes to the terms and conditions of leveraged CWSRF loans to make them marketable. To the maximum extent practicable, the terms and conditions will be the same as for direct loans.

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.433 & ORS 468.437

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

30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93; DEQ 3-1995, f. & cert. ef. 1-23-95; DEQ 10-2003, f. & cert. ef. 5-27-03

## **Wastewater Hardship Grant Program**

### **340-054-0085**

#### **Wastewater Hardship Grant Program**

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

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.425

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

### **340-054-0087**

#### **Definitions**

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

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

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

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

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

Stat. Auth.: ORS 468-423 - ORS 468.440

Stats. Implemented: ORS 468.423

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

### **340-054-0090**

#### **Applicant Eligibility**

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

- (1) Is eligible for a CWSRF loan;
- (2) Has a project on the program's project priority list in the current IUP;
- (3) Is a rural community with a population of 3,000 or less;
- (4) Has a per capita income of the residents served by the project equal to or less than 80% of the national per capita income of the United States during the same period, based on the last census report or a more recent survey acceptable to the Department;
- (5) Has an unemployment rate of one or more percentage points above the annual unemployment rate for the United States, based on the last census report or a more recent survey acceptable to the Department; and
- (6) Is without a centralized sewer collection or treatment system, or need improvements to on-site systems.

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.437

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

### **340-054-0093**

#### **Uses of Grant Funds**

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

- (1) Grant funds may be used for the planning, design and construction of publicly owned treatment works and alternative wastewater systems. Grant-funded project costs must be eligible costs of wastewater system projects under the CWSRF program.
- (2) Grant funds may be used for training, technical assistance and education programs relating to the operation and maintenance of wastewater systems. The primary purpose of technical seminars and other training must be to train eligible communities.

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.429

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

### **340-054-0095**

## **Selection of Grantees**

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

- (1) Total amount of grant funds available;
- (2) Number of eligible applicants and the cost of proposed projects;
- (3) Current economic status of the applicant community;
- (4) Availability of other funding for the project, and affordability of the project without Wastewater Hardship Grant funds;
- (5) Ability of the community to financially support the long-term operation, maintenance, and replacement costs of the project when completed;
- (6) Use of the self-help approach to leverage the project;
- (7) Community support for and involvement in the project;
- (8) Technical assistance received from the Department through the Environmental Partnerships for Oregon Communities (EPOC) Program or through a comparable program that helps communities assess and prioritize multiple environmental mandates;
- (9) Relative ranking of the project on the CWSRF Intended Use Plan's project priority list;
- (10) Water quality benefits of the project, including receiving water body health, applicable watershed plans, applicable Total Maximum Daily Load allocations, salmon recovery efforts in the area, threatened and endangered species habitat in the area, groundwater management areas, and other environmental concerns; and
- (11) Public health benefits of the project.

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.437

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

## **340-054-0097**

### **Coordination with Clean Water State Revolving Fund Loans**

- (1) A CWSRF loan for at least 15% of the total grant and loan amount must be executed and loan funds disbursed in coordination with the grant moneys.
- (2) The Department may award Wastewater Hardship grants without following the ranking on the PPL described in OAR 340-054-0025(4).

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

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

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

Stat. Auth.: ORS 468.423 - ORS 468.440

Stats. Implemented: ORS 468.433

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

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

#### **340-054-0098**

##### **Definitions**

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

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

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

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

#### **340-054-0100**

##### **Implementation within the Clean Water State Revolving Fund Program**

(1) OAR 340-054-0098 through OAR 340-054-0108 prescribe the use of Act funds through the Clean Water State Revolving Fund (CWSRF) when such funds are available to the department.

(2) When Act funds are available to the department, these funds must be awarded to public agencies in accordance with the Act and are subject to the requirements of the Clean Water State Revolving Fund.

(3) All requirements for projects funded under the Act not specifically addressed in OAR 340-054-0098 through OAR 340-054-0108 are subject to OAR 340-054-0001 through OAR 340-054-0065.

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

### **340-054-0102**

#### **Project Eligibility under the Act**

(1) Eligibility for funding under the Act is the same as prescribed in OAR 340-054-0015(1) except planning, as defined in OAR 340-054-0010(38), is not eligible.

(2) The acquisition of land for any purpose, or the development or purchase of an easement are not eligible under the Act.

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to ORS 468.440

### **340-054-0104**

#### **Use of Funds, Intended Use Plan under the Act**

(1) Funding purpose. Notwithstanding OAR 340-054-0020, funding provided under the Act may be used only for the following CWSRF purposes:

(a) To make loans, or purchase bonds,

(b) To pay CWSRF program administration costs to the extent allowed by federal law,

(c) To earn interest on fund accounts.

(2) Loan Increases. Notwithstanding OAR 340-054-0025(6)(c), loan increases using Act funding will only be made to loans funded by the Act and only to the extent consistent with OAR 340-054-0106.

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

(4) Loan reserve. Notwithstanding OAR 340-054-0065(2)(c)(B), the required reserve of any individual loan cannot be funded with CWSRF loan proceeds provided from the Act.

(5) Intended Use Plan (IUP):

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

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

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

### **340-054-0106**

#### **Allocation of Act Funds**

Notwithstanding OAR 340-054-0025(6), funds made available by the Act must be allocated as follows:

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

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

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

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

(5) Funding categories. Funds available under the Act may not be used to establish an Expedited Loan reserve, a Small Community reserve or a Planning reserve.

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

**340-054-0108**  
**Financial Terms**

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

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

(2) Principal forgiveness.

(a) A loan made to a small community as defined in OAR 340-054-0010(48) must include 75 percent principal forgiveness on the total amount borrowed.

(b) All other loans must include 50 percent principal forgiveness on the total amount borrowed.

(c) Principal forgiveness is granted upon execution of the loan agreement.

Stat. Auth.: ORS 468.020, ORS 468.440

Stats. Implemented: ORS 468.423 to 468.440

**Funding under the State Fiscal Year 2010 Special Reserve**

**340-054-0110**

**Purpose and Applicability**

(1) OAR 340-054-0110 through 340-054-0118 govern the use of funds under a special reserve through the Clean Water State Revolving Fund (CWSRF) program for the state fiscal year 2010 (July 1, 2009 to June 30, 2010).

(2) All requirements for projects funded under the special reserve not specifically addressed in OAR 340-054-0110 through 340-054-0118 are subject to OAR 340-054-0001 through 340-054-0065.

Stat. Auth.: ORS 468.020 & 468.440

Stat. Implemented: ORS 468.423–468.440

Hist.: DEQ 5-2009(Temp), f. 9-3-09 cert. ef. 9-4-09 thru 2-28-10

**340-054-0112**

**Use of the Special Reserve**

(1) The department will establish a special reserve for the state fiscal year 2010 in an amount equal to 50 percent of the total funds available for the state fiscal year 2010, excluding any fiscal

year 2010 capitalization grant. This reserve is in addition to the reserves established under OAR 340-054-0025(6), except as provided in section (5) of this rule.

(2) Funds available under the special reserve may not be used for planning loans.

(3) Loans made from the special reserve will only be used for new projects included in the state fiscal year 2010 Intended Use Plan.

(4) Notwithstanding OAR 340-054-0025(6)(c), funds from the special reserve will not be used for increases to existing CWSRF loans.

(5) During the time that OAR 340-054-0110 through 340-054-0118 is effective, the expedited reserve established under OAR 340-054-0025(6)(c)(A) in the amount of \$2 million will be moved to the CWSRF general fund.

Stat. Auth.: ORS 468.020 & 468.440

Stat. Implemented: ORS 468.423–468.440

Hist.: DEQ 5-2009(Temp), f. 9-3-09 cert. ef. 9-4-09 thru 2-28-10

### **340-054-0114**

#### **Allocation of Funds**

(1) The department will determine the amount of funding to be provided to an applicant, but the loan amount allocated to any one borrower under the special reserve may not exceed \$5 million.

(2) A borrower who receives funding under the special reserve may also receive funding from the CWSRF general fund, subject to the requirement of OAR 340-054-0025(6)(a), or from the CWSRF Small Communities reserve established under OAR 340-054-0025(6)(c)(B).

Stat. Auth.: ORS 468.020 & 468.440

Stat. Implemented: ORS 468.423–468.440

Hist.: DEQ 5-2009(Temp), f. 9-3-09 cert. ef. 9-4-09 thru 2-28-10

### **340-054-0116**

#### **Financial Terms**

Notwithstanding OAR 340-054-0065(5), the interest rate on a loan funded from the special reserve will be zero percent, regardless of the term of repayment.

Stat. Auth.: ORS 468.020 & 468.440

Stat. Implemented: ORS 468.423–468.440

Hist.: DEQ 5-2009(Temp), f. 9-3-09 cert. ef. 9-4-09 thru 2-28-10

### **340-054-0118**

## **Intended Use Plan**

Notwithstanding OAR 340-054-0025(5)(d), the department will provide at least 14 days for public comment on the proposed Intended Use Plan.

Stat. Auth.: ORS 468.020 & 468.440

Stat. Implemented: ORS 468.423–468.440

Hist.: DEQ 5-2009(Temp), f. 9-3-09 cert. ef. 9-4-09 thru 2-28-10